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ABSTRACT

The Cleartalk project was developed in New South Wales (Australia) to help police respond to the communication needs of people with intellectual disabilities. Section 1 presents "The View from the Street: A Working Knowledge of Intellectual Disability," which discusses how individuals with intellectual disabilities are denied their right of access to the law and its processes due to communication problems. It also discusses the issues of isolation and devaluation, trust and conditioning, lack of education within the criminal justice system concerning people with intellectual disabilities, and police protocols for dealing with hidden disabilities. Section 2 adopts working premises about police work, communication, and people with intellectual disabilities; reviews police responses to a questionnaire revealing different perceptions of intellectual disability; discusses educational implications for police; and outlines a recommended procedure for assessing the communicative effectiveness of individuals with intellectual disabilities. Section 3 presents Cleartalk training modules on the impact of intellectual disability on the individual, recognizing that an individual has an intellectual disability, techniques for questioning the individual, assessing communicative effectiveness, and responsive policing. A bibliography of approximately 100 items and a copy of a promotional brochure complete the report. (JDD)

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....can you hear me?

Cleartalk

....are you listening?

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Police Responding to Intellectual Disability

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Cleartalk: police responding to intellectual disability

Mark Brennan

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Acknowledgments

The Cleartalk project has been developed to help police respond to the communication needs of people with an intellectual disability. The project has been made possible by the generous support and contribution of a wide array of individuals and organisations.

The Criminology Research Council provided the major proportion of funding and accepted the challenge to provide a forum for the multi dimensional study of difficult questions about the effective and fair administration of justice in this country. The Council is a significant contributor to an informed, critical and compassionate community.

Other organisations have also contributed commitment, expertise and resources. Charles Sturt University provided accounting, communication, library and transport facilities. The CSU Office of Research and the School of Education provided extra finance and office space, and colleagues provided much needed discussion. The Disabilities Advocacy Network in Wagga Wagga, and many other advocacy groups around the country, demonstrated the need for, and the potential usefulness of, such a project. During the study some eighty informants throughout Australia were consulted. Their criticisms, suggestions and commentaries have all been significant in the final shaping of the project and ensured that it maintained both local and national relevance.

The project's advisory group consisted of Ann Townsend (President, Wagga Wagga Disability Advocacy Network), Matthew Gown (teacher), David Ross (advocate/ disability consultant), Pedro Fernandez (police officer) and Catherine Thomas (community worker). Their contributions have been invaluable, especially those of Cate and Pedro as evidenced in Section 1 of this publication.

The work of the New South Wales Law Reform Commission and advocacy groups around the country has created the political space which makes the work worth pursuing. In addition the New South Wales Police Service has shown an eager willingness to respond to the deep seated problems circumscribed by the demands of policing, the need for fair treatment, and the complex dimensions of effective communication.

The Cleartalk project is based upon the insights, concerns and perceptions of fifty two police officers and police recruits. Their generous participation must be acknowledged by all those who seek compassionate change to the existing social order.

We owe thanks to all of the above for their faith, support, criticism and understanding.

For Pedro and the people for whom he seeks a voice.

Everyone has the right to be heard and responded to in a language they understand. It is a challenge for us all to make that right a reality for people with a intellectual disability.

SECTION 1

The view from the street: a working knowledge of intellectual disability

Pedro Fernandez, NSW Police Service
Catherine Thomas, Social Educator (Disability)

Australians generally believe in their rights to independence and freedom. These rights are given substance when we select a career, an education, a place of work, a place to live, and the company of friends. Central to all these is the right to be heard and responded to in a language over which we have control. This is the basis of our 'language (or discourse) rights'.

For many years people with an intellectual disability have not had these rights. Mostly these people have been lost behind the walls of institutions for reasons which today appear mythical and inhuman. Incomplete social theories and the insensitive policies which flowed from them are gradually being replaced.

> People with an intellectual disability are, first and foremost, people. They are as valuable as everyone else, and should not be disadvantaged because of their disability....People with an intellectual disability belong in the community with everyone else; living, working alongside their non-disabled peers. They have the same rights of citizenship as any other person....People with an intellectual disability are entitled to a chance to lead a decent life that other citizens would wish for themselves...It is a worthwhile endeavour for our community to spend time, effort and resources, so that people with an intellectual disability can have their chance for a decent life in accordance with their wishes
>
> (NSW Council for Intellectual Disability, 1988: 2)

It is tragic that the freedoms most of us expect are not available to people with an intellectual disability. Many government and private organisations are striving to change this inequity by providing greater access to education, employment, and accommodation. One area of access which has been overlooked until recently is that of criminal law.

Equality in the eyes of the law is a most significant human right. The law can take away our freedom and it can either deny or give us justice and safety. Never is this more obvious than in the lives of people with an intellectual disability.

There are several ways in which people are denied their rights. One way is by denying their language and discourse rights. Because people with an intellectual disability do not have mastery over basic communication skills, they are denied linguistic access to the law and its processes - that is, they cannot communicate successfully with those who represent the law.

Often other aspects of their lives also combine in ways which mitigate against a 'fair deal' under the law. Some of these aspects are as follows.

1. Isolation and devaluation

Intellectually disabled people are denied access to many everyday activities which the 'normal' person takes for granted. People in the wider community often ostracise these people through ignorance of the nature of intellectual disability.

With the introduction of normalisation and de-institutionalisation, people with intellectual disabilities have been placed in the community from

schools, hostels, and other institutions. (McLaughlin and Wehman, 1992) The theory goes that, with support services, they should be able to live in the community at large and achieve equal status. Too often these attempts at integration have failed because the community cannot accept and respond to these people as equals.

The consequent separation creates for the person with an intellectual disability a very small circle of friends, acquaintances, relatives and most significantly, available role models. The basic human need to be accepted by others is even greater for those who are disabled and isolated. In seeking acceptance from others, many of these people put themselves into situations where they can easily be abused. The group of 'normal' friends is usually oppressively small. Stealing from intellectually disabled people and using them for sexual exploitation and entertaining times often form the basis of the 'friendship'.

2. Trust and conditioning

Trust was an issue mentioned briefly in the NSW Law Reform Commission's 1992 Issues Paper on 'People with Intellectual Disabilities and the Criminal Justice System'. The demands set by the 'able' society are often unattainable for people with any disability, but especially those with an intellectual disability. Whilst there are many caring individuals who teach, care for, befriend and advise people with an intellectual disability on nearly every facet of their life, the concern *can* be that living in too sheltered an environment decreases the need for the person with an intellectual disability to be assertive. This form of caring relationship can create a vulnerable, unassertive and uninformed adult. An undiscriminating sense of trust can create an environment which provides opportunities for exploitation. It is so often this trust which leads to the abuse of people with an intellectual disability and opens the door for criminals to enter their lives and homes.

CASE STUDY

A married couple, both with intellectual disabilities, were cultivated by a third party to 'trust' him. The trust building occurred over 12 months.

The man encouraged the couple to let him have access to their Disability Support pensions so he could 'budget' for them. Whilst the couple thought they were being assisted with their budgeting the 'friend' was removing money and putting it into his own account. He was also charging the married couple extraordinary amounts for special favours; ten dollars a trip to run them around town and fifteen dollars a day to use his washing machine.

He also encouraged the couple to take out credit which he subsequently used for himself. The couple was then persuaded to move in with him and his family and to leave their rented flat. He then charged them excessive board.

After some time the friend left town and the two were left with debts they were unable to pay. They had also lost the roof over their heads. The couple had to find emergency accommodation and find a credit union that would allow them to consolidate their debts. Today the couple is still paying back the loan to cover their debts. They are still the victims of the trust they placed in their friend.

3. Lack of education within the criminal justice system for people with intellectual disabilities

People with an intellectual disability have a poor understanding of the law, the criminal justice system and the duty of its agents. There are many problems with understanding current laws. Traffic laws are one example - a handbook is issued free and people take a test. It should be fairly obvious when an offence is being committed. However this only applies to those who have read and understood the handbook. For anyone without competent reading skills, there is no certainty that they understand the current road laws.

Similarly there is little easily accessible information about criminal offences. How then do we know what is an offence and what is not? The answer is that we develop our knowledge of the law from those around us.

Other sources of information about the law and changes to it are disseminated via newspapers, radio and television. If it is sometimes difficult for the 'average' citizen to keep abreast of these changes, how much harder is it for people with an intellectual disability? Whether they live in hostels, group homes or on their own, the people they usually have daily contact with also have a disability. As a result they are all in a similar predicament. Not only is there no suitable role model for developing their knowledge of the law and awareness of moral ethics, but the media may also be useless to these people because the language is too difficult to understand.

Lack of knowledge of the criminal law could explain why there is such a high proportion of people with an intellectual disability in gaols. (Hayes, 1984)

Sometimes carers, service providers and guardians can unwittingly cause serious behavioural problems and criminal conduct in those with intellectual disabilities. If they do not inform such people of their legal obligations, but allow them to sidestep consequences because of their disability, then no learning takes place and offending actions continue. This is often the case in police dealings with intellectually disabled offenders, where police may fail to take action because of a person's disability. They may fail to interview an offender, or they may not explain what an offence is or the consequences of committing an offence. Thus a person may continue to offend.

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On the other hand, victims who have no knowledge of the criminal law may not realise an offence has been committed against them - or indeed what an offence is. This can be observed in terms of:

- poor understanding of private property. This may be due to their living in circumstances where sharing property and living quarters in group homes and hostels is the standard;

- poor understanding of their right to control their own bodies and feelings. This can be related to their living environment where there is possibly a high degree of support with little opportunity for them to show indepen-dence, assertiveness or self advocacy;

- the general community's poor acceptance of their right to live as equals and the low self esteem which results;

- the reluctance of authorities to take action because they believe the person has poor verbal skills or a low level of understanding which prevents them from being reliable or competent witness, whether they are accused or victims;

- never being educated to report crime and seek help;

- inappropriately delivered advice on their rights when being interviewed or arrested.

CASE STUDY

An intellectually disabled woman was confronted in her house by an intellectually disabled man who took his clothes off in front of her. At the time the woman did not realise that this intrusion was a criminal offence. When she later told somone about the incident, and understood that it was an unlawful offence that she did not have to put up with, she proceeded to make a complaint against the offender. She then confronted him in the presence of police and welfare workers stating that he had no power over her and he was not to repeat the offence. When she was later the victim of a serious offence she made no hesitation in laying a complaint because of her previous 'educational experience'.

4. Police protocols and the hidden disability

When dealing with people it is most important to establish what their needs are and how best to respond to these needs.

The criminal law and its agents often reflect the community in which they operate. As the New South Wales Police Commissioner indicated at the height of the 'Redfern Affair', police only echo the attitudes of the community.

As long as police have limited knowledge of intellectual disabilities, their

perceptions will remain based on myth and prejudice. The need for education programs with a focus on communication issues is obvious. The 'Cleartalk' project is a direct and informed response to this need. It is also based on the express needs and concerns of police officers who recognise that they lack confidence in dealing with disabled people. Many feel insecure about communicating with people with an intellectual disability.

Within the police culture there are also well established attitudes that police should not have a social welfare role, despite the fact that every day they perform a 'welfare role' when they attend domestics, deaths, and suicides. People with intellectual disabilities sometimes require assistance that falls into the category of social welfare. When police fail to even listen to a complaint, the complainant may not ask again for help from police.

The court's regular failure to accept the evidence of people with an intellectual disability also affects the way police handle criminal complaints from the same people. If courts are not going to take action on these issues then police simply follow suit.

Unfortunately at times police believe that intellectual disability is a medical problem so they mistake or confuse it with psychiatric illness. This can lead them to reject the fact that they should be involved with these people and listen to their complaints.

It is sad that actions are often dictated by the needs of an organisation rather than the needs of people. This issue not only occurs in police services but in welfare organisations where self preservation becomes a major focus of day to day work. Police and welfare organisations alike may become confused and find it too difficult to deal with an intellectually disabled offender, witness or victim. Confusion reigns when it comes to the issue of psychiatric illness and intellectual disability. The Law Reform Commission in 1992

> ...acknowledges the clear distinction between intellectual disability and mental illness and the desirability of separate treatment and services, but notes the confusion which still exists in the community. This distinction is often not recognised. Procedures and treatment appropriate for people with mental illness will often be inappropriate, and even detrimental, to the person with an intellectual disability.

The most important first step is identification of the disability and the recognition of the problems associated with that disability. When taking action against or on behalf of a person with an intellectual disability, police must establish the level of functioning that person may have and the form of communication which is required. It is sometimes difficult however, to establish that the person has 'an intellectual disability'.

Due to the person's conditioning and training, they may present well verbally and physically but may not know what day it is or the year of their birth. They may not look or act 'disabled' and the perception held by many police is that people must have appropriate outward appearances or mannerisms in order for a disability to be recognised.

The person may not inform police of any disability because of the negative way he or she may have been treated on a previous occasion. She or he may also not feel they have a disability and so see no need to inform police of such.

The person may never have been diagnosed or serviced by the appropriate organisation. There may also be no records or access to records indicating their disability. Police may have had no previous experience in identifying people with an intellectual disability and may not know what questions to ask. Even if they do suspect a disability, they may not know who to contact for confirmation or support. The 'Cleartalk' project has responded to some of these complex issues.

CASE STUDY

An adult male with a mild intellectual disability appeared to be suffering from depression when he presented himself to police. He seemed suicidal. Police were concerned about his state of mind and his risk to himself. They took him to a hospital for psychiatric assessment. The result of the assessment indicated he did not have an illness or an intellectual disability, despite documented evidence that he had an intellectual disability, since he had attended a special school, worked in a sheltered workshop, and was serviced by a disability organisation.

This young man presented so well that professionals were unable to establish an intellectual disability. However he was not able to communicate his true concerns (leading to depression and suicide) to those who needed to hear them. He was probably unable to understand what was being asked of him by either the police or the psychiatrist.

It appears that sometimes even professionals have difficulty establishing whether or not a person has an intellectual disability. This raises the question of how difficult it must be for police who have never been educated in the field of disabilities.

Whether people with an intellectual disability come into contact with police as victims, offenders or witnesses, there obviously need to be some communic-ative adjustments made. The consequence of not doing so is that victims remain isolated, offenders are either not brought to account or fail to access their rights, and witnesses remain unheard. The place of communication in all this is central.

Human nature and social standards dictate how we seek out and obtain jobs, friends, partners and recreational activities. Generally these choices are governed by our collective interests arrived at through talking, reading and listening.

How well a person survives the criminal justice system depends on how well they present their case as a victim or offender. Communication is the most important currency in the criminal justice system. Communication

with its subtlety and skill requires an expertise beyond the understanding of a person with an intellectual disability and leads only to their confusion and depression. The supposed need of the criminal justice system to pursue 'truth' forces high expectations and practices upon everyone's communicative ability. This begins with complex and thorough police interviews and ends with forceful and confusing cross examinations at court. Justice is administered proportionately according to how people present rather than what the system might offer. This social order enforces a cruel judgment upon people with an intellectual disability.

The 'Cleartalk' project has much to offer. It interweaves the voice of police with the voice of people with an intellectual disability and provides a framework for productive response. The 'Cleartalk' project represents a cohesive attempt to bring together policy, training and publicity materials in order to support police in responding to the communicative needs of people with an intellectual disability. In this sense it provides both the challenge and the support for police to lead the way in establishing a moral change in the criminal justice system whereby the voice of people with an intellectual disability can be heard like every other citizen who asks for protection and justice.

SECTION 2

The Report

Chapter 1

Premises and parameters

> We are undoubtedly becoming more enlightened in our approach to the problems of mental disability generally. But we still have a long way to go. Little or no recognition has been given to the vulnerability of intellectually disabled people during the investigatory phase of the criminal process.
>
> (Justice Matthews, Supreme Court of NSW, 'Foreword' in Hayes and Craddock 1992: iii)

Instruction 37.14 of the NSW Police Commissioner's Instructions in *Guidelines for Questioning* directs police officers to "...take appropriate measures to ensure a fair interrogation". This directive is an acknowledgment of the general right of all people to be listened to and spoken to in such a way that they can both understand and respond. 'Fair' is being interpreted here as creating the circumstances where police can fulfil their duties and where members of the public, whether suspect, victim or witness, have adequate opportunity to say or express what they might. The 'Cleartalk' materials have been developed in direct response to the knowledge that many people with an intellectual disability do not in fact get the opportunity for such expression. The materials are also a direct response to the need to support police officers as they seek to carry out their complex and difficult jobs in a compassionate, informed and efficient way.

There are three dimensions to establishing fair communication and they are:

1. the constraints and obligations of police work;

2. an understanding of how language works to either promote or compromise fair communication for all concerned.

By acknowledging these two dimensions we shall come to appreciate the focal concern of the 'Cleartalk' materials, namely:

3. the communication needs of people with an intellectual disability.

It needs to be stated from the outset that the usefulness of the materials does not depend on one's ability to assess the extent to which people are intellectually disabled. Rather the materials seek to develop a sensitivity to the communicative demands of a situation. If this can be achieved then people with an intellectual disability, both individually and as a group, are the ones most likely to benefit.

In a recent study, Hayes (1993: ix) suggested that around 30% of people appearing before local courts "....would probably have serious difficulty in comprehending or coping with court procedures..." There are three good reasons why police need to recognise and respond to the communication needs of this group of people when carrying out their work.

1. **Police work would be made more effective and efficient.**
   Some examples of such work would include targeting effective case preparation accurately rather than conveniently; early assessment of alternative strategies to prosecution or imprisonment; and efficient evidence collecting.

2. **The rights and needs of many people would be promoted.**
   Informants and witnesses could 'have their say'; status as a victim or suspect could be more accurately assessed; and appropriate measures for taking evidence and statements could be put in place.

3. **The conditions of fair interrogation would be made somewhat clearer.**
   The status of police as 'brokers' rather than 'rulers' would be furthered; relations between police and public would move further towards co-operation; and general rights through response to individual needs would be upheld.

The need for these materials grows directly out of the understanding that in order to 'hold your own' in our complex and demanding society, making yourself heard, and being listened to, are basic human needs. When this doesn't happen individuals are isolated, groups are marginalised, and their needs are eliminated from our consciousness (Brennan, 1993). For the less verbal people in our language based society it is like being restricted to a wheelchair in a land of footballers, where being good at football is the only way to be identified as a real person.

Because what we speak and hear shapes how we think about the world and how we relate to it, our language can be thought of as either a *battleground* or a *meeting place*.

However the distinction is not always so clear cut and, as we all know from our own experience, our communications are an uneasy mixture of both. We use our language to win arguments, share jokes, tell stories, and question the actions of others. From the point of view of police work the best results flow from collecting and recording the most complete and detailed account of an event. How we use our own language, how we acknowledge the language abilities of others, and how we interpret what's going on, will determine whether communication is clear and fair. Efficient, fair and effective police work depends to a large extent on establishing principles and practices of communication that admit the needs of all parties.

In operational terms this means expanding and detailing the meanings that a victim, suspect or witness might need to make rather than restricting or controlling possible or expected meanings. Restriction and control of meaning can occur if you don't recognise when a person hasn't understood what you are saying. It can occur also by not recognising that they need an individual style of help or support to tell you what they might.

In order to give substance to this insight we possibly need to expand and define our notions of language and effective communication. Just how do different people 'say' things and how can we learn to 'hear' what they say? Are there different ways in which we can 'listen'?

Different members of our community express themselves with vastly different styles, codes and techniques. These range from abnormally quick or abnormally slow speech to alternative vocabulary and pronunciation, to the use of augmentative systems such as sign. Obviously we need to recognise and respond to these various ways of communicating if we are committed to effective, efficient and fair communication. This mostly happens when we have a significant stake in the communicative effectiveness of the situation.

There are two levels at which we can respond to the communication needs of people with an intellectual disability. The first is to recognise the basic needs of all people in situations which depend on clear communication. The second is to acknowledge the adaptations necessary in individual cases to ensure these common needs are met.

'Cleartalk' does not suggest that police should speak a 'new language' for every member of the public. Rather it suggests that there are basic communication needs common to all people which affect individuals in different ways. In the context of police work these needs have to be met in order to complete tasks such as taking a statement, collecting evidence, or questioning a suspect.

The 'Cleartalk' materials are specifically intended to support police work and in so doing promote efficient, effective and fair practice. Such practice will not only benefit the positive self concept of police but will also benefit members of the public, especially those people with an intellectual disability.

In order to move towards these desired goals we shall adopt three sets of working premises about police work, communication, and people with an intellectual disability. These are spelt out in the following chapter in which we briefly describe the research process employed in the project in Chapter Two - 'Cleartalk in perspective'.

This is followed in Chapter Three by a brief review of police responses to a questionnaire revealing different perceptions of intellectual disability. The first level of results from the research process is reported in Chapter Four in terms of seven key issues. That chapter concludes with the educational implications for police. These provide the bridge to the suggested training materials (which are presented in Section 3 of the publication. Chapter Five outlines a specific recommended procedure for assessing the communicative effective-ness of people with an intellectual disability. This procedure aspires to fair communication and responds in part to the communicative needs of people with an intellectual disability. Chapter Six concludes the report with a brief summing up and a set of recommendations. A set of publicity materials in the form of a brochure

and a poster (which are reproduced on the last two pages) have been also developed so that policy, curriculum and publicity all complement each other. All have been drawn from common sources.

Chapter Two may be of limited immediate interest but it provides background and process information which help define and interpret both this report and the project as a whole. The substantive focus on police responses to intellectual disability starts in Chapter Three, 'Police perceptions of intellectual disability: a window of opportunity for all' and is taken up and expanded on in Chapter Four, 'The issues arising'.

Chapter 2

'Cleartalk' in perspective

The 'Cleartalk' materials have been created to support police work at three levels. The first is a report providing background and research information which is intended to inform **policy.** One set of policy outcomes that can be drawn from this report is expressed in terms of the **educational** needs of police officers and this represents the second level. The education modules have been designed for use either during 'on-the-job' training days or together as a whole unit of pre-service study. Of course there are other manifestations of policy that the report can be used to generate. Also the educational implications will be useful for providers other than police officers in the NSW Police Service. The third level is presented as **publicity** material; a poster and pamphlet for wide distribution to police generally. All of these materials are derived from a single research and development process. The aim has been to create three sets of materials in which policy, education, and publicity complement each other.

These materials are based on three sets of premises about **police work, communication** and **people with an intellectual disability.**

Police work

Behind the statement that 'police work is difficult' lies a set of insights and perceptions which indicate that not only are the tasks complex, but there are also basic contradictions inherent in much police work. These are revealed through interviews with police officers, through studies and reports of police work, through public perceptions of police and their work, and through changing expectations which are embodied in new practices and policy statements. These may be summarised as follows:

- Police work is complex in that it requires a constant and changing responsiveness to circumstances
- Police work is subject to a wide variety of definitions and assessments
- Police often come into contact with the public in situations of stress and trauma
- Police are often called upon at the critical end of difficult (violent, confused, traumatic) situations

Communication

A common model of communication depends on the concept of 'sender', 'receiver' and 'message' joined in linear harmony. It is often assumed that all three components are stable and (almost) independent entities. People

think that if something goes wrong, it must be the fault of one of the components of (or participants in) the communication. However such a model does not take into account the (pragmatic) reality of communication. Communication is:

- an accumulation of meanings;
- the context in which it occurs;
- the relationship between the communicators;
- the expectations of the participants;
- the means by which meanings are created and responded to; and
- the effects upon meaning of interaction between the communicators.

Every new piece of information, utterance or expression feeds back into the communicative context, thus permanently changing the nature of any future interpretations or responses to a particular piece of language. The following premises arise from such a perspective on language in use:

- Language is a human construction and a social phenomenon.
- Language in use can be described and analysed in terms of 'what's going on' between the actors.
- Human interaction is determined by and viewable through language.
- Language and the meanings we create with it are made of more than just words.
- The pragmatic and social features of language are basic to our understanding of language in use.
- Our ability to articulate thoughts and feelings are often (mistakenly) taken as representing those thoughts and feelings.
- Producing responses is not the same as understanding.

People with an intellectual disability

A fundamental premises of this project is that people with an intellectual disability are first and foremost people. To state the obvious may seem unnecessary but studies on identifying groups within society show marked differences in response depending on labels and descriptions used. These differences can be attributed to the (negative) connotations attaching to any particular label at a given time. 'Handicapped' and 'Retard' will ring bells of association with many. Beyond the expressions themselves there is also the issue as to the way the description is formed. 'Retard' is a noun suggesting a permanent state. In the case of 'handicapped' person, the emphasis is on the condition rather than the person. However in describing someone as a 'person with an intellectual disability', the emphasis is on them being a person first, and having a particular

characteristic second. Some ways of describing guide us to perceive 'people' first; others constrain us to see only the deficit that a person may have. In this context we need to clarify that:

- People with an intellectual disability are first and foremost people.
- They cannot be required to forego any rights or human considerations afforded to everyone else in the community.
- They represent a wide range of descriptors and abilities.
- They are often not recognised as requiring individual response from others.

Although the condition of people with an intellectual disability can be understood in terms of cognitive ability, the fact is that their condition in society is socially determined largely as a result of their language abilities. We therefore need suitable social definitions and responses, as well as clinical knowledge about cognition.

Police work which seeks to be 'fair' will accept that language is best understood as a 'transaction' between people. This understanding will lead to reduced isolation and increased responsiveness to the range of communicative needs of all people, and especially people with an intellectual disability.

Beyond the premises

To create support materials for police, these sets of understandings had to be brought together in a productive, analytical and informative way. Thus a procedure was adopted which recognises the significant research concepts of:

- stakeholders as informants;
- member checking;
- emergent design in response to the focus question;
- recursive influence of data and;
- triangulation of data.

In the case of this project the primary stakeholders are police officers, people with an intellectual disability and formulators of policy. (A full and detailed account and defence of this research approach is to be found in Guba and Lincoln's 1989 publication *4th Generation Evaluation.)* A brief summary of the process employed can be discerned from the following list of activities.

Establish the parameters of the project (including what it is not about). The project is about investigating and responding to police perceptions about people with an intellectual disability.

Create a network of informants and stakeholders.

Review the literature with reference to police work, communication/language functions, and intellectual disability.

Create a data base of police perceptions and responses to people with an intellectual disability, communication issues, police work, and the (communicative) conditions of people with an intellectual disability .

Collect and collate materials which project the individual and collective voices of people with an intellectual disability.

Identify and respond to issues about police work, communication and disability.

Establishing the parameters

Using the concerns and issues of primary stakeholders as organisers for the project, we sought to use and explain an interactive workable model of language in use. This model impels those involved in a communication to recognise their own contribution to the effectiveness of that communication. The model specifically critically challenges responses such as "People with an intellectual disability have the minds of children", "They can't understand anything abstract", "All you have to do is break things up into small chunks of information" or "Just put what you have to say into simple language".

The **concern** of the project is with people with an intellectual disability and the **focus** is upon the reactions and perceptions of police officers. The **aim** is to respond supportively and productively by showing connections between the nature of language, police work and the needs of people with an intellectual disability. The **outcomes** are encapsulated in the report and the subsequent education and publicity materials.

There are many points of tension which arise when considering the communicative needs of people with an intellectual disability in their dealings with police. From the outset there seemed to be some contradictions between the perceptions of police, the status of people with an intellectual disability, and views of communication. Rather than establishing 'consensus' by eliminating or reducing either of these claimants, we tried to construct a new appreciation by considering those very points of tension.

Creating an informant network

Contact with a wide array of practitioners and professionals was necessary for the following reasons.

1. Pressures, tensions and issues surrounding the status of people with an intellectual disability and their relationship with police form the social and political context in which the work was carried out.

2. Contact with people who have a continuing commitment in the field establishes both a long term and current perspective.

3. Any change of either policy or practice is best effected through the participation, acknowledgment and ownership of the widest range of people possible.

4. Identification of key personnel and available resources, and possible immediate links between such, is part of the research and development process.

5. Ongoing criticism and comment is best made by the those who are informed and committed.

Reviewing the literature

An initial search through the literature pertaining to the communication needs of people with an intellectual disability revealed three things.

The first is the lack of use of the term 'people with an intellectual disability'. The terms 'mental retardation', and 'intellectually handicapped' which are now generally regarded as offensive, had to be used to locate possibly useful material. This difficulty was due partly to the complete insensitivity of most of the U.S. literature. We would like to note here that the above terms are offensive not only because of a misplaced sensitivity to outdated euphemisms but because of the way in which such terms construct people. 'Mental retardation' reifies - it makes a 'thing' out of a series of processes and conditions to which 'the person' is, or is not, incidentally attached. 'Intellectually handicapped' attributes an (admittedly) significant condition to a person but in so doing becomes the primary signifier.

The reason for our comments here is not to ask for yet another comfortable and comforting euphemism, but to point out the very significant way in which different labels construct our perceptions. And this project is about how people (police) respond to other people (people with an intellectual disability) according to their perceptions of them.

Secondly, a great deal of the literature appearing in journals on 'deficiency' and 'learning', is psychological in orientation and concerned primarily with the testing and influence of variables and the conceptual fragmentation of the condition of 'having a mental handicap'; of 'being retarded'. Amongst the literature on educational practices, much focusses on the 'special' provisions needed to cater for a wide array of students, or the conditions that need to be created to achieve 'normality'

A third body of articles was concerned with identifying and testing the details and limits of given definitions and measures of intellectual disability.

Given the pragmatic/functional concepts of language in use and the pressing and real needs of people with an intellectual disability, much of this literature was not directly accessed. Articles which were of direct interest were those which sought to link intellectual disability with language competence.

The voice of police

In order to gather and respond to the expressions, insights and experiences of police officers in relation to people with an intellectual disability, negotiations with the NSW Police Service policy division were undertaken, local commanders were contacted, and respondents were identified by a variety of means. These ranged from expressions of interest, referrals by colleagues in other professions, and by random selection. Police officers in the ACT were included, having been organised by an advocacy group and a local commander. Several initial and follow-up interviews were carried out using telematic facilities but the bulk were done face to face. There were 52 interviews in all, and these included a full range of ranks, ages and positions. They took place in two rural villages (Coolamon, Junee), three regional cities (Albury, Griffith, Wagga Wagga), several locations in the state and national capitals (Redfern, Hornsby, Canberra), and the Goulburn Academy.

Although the consultations were wide ranging and open ended they were organised around the following questions.

1. What experiences do you have with people with an intellectual disability?

2. How would you recognise a person with an intellectual disability in the course of your duties?

3. Do people with an intellectual disability have special needs?

4. If so, what might these be?

5. What do you consider to be some of the communicative needs of people with an intellectual disability?

6. How do you as a police officer cope with these special needs?

7. What information do you need about people with an intellectual disability that would make your task easier?

8. If this information can be collected what is the best way to present it to police so they find it useful?

9. Of all the training and professional development that you have taken part in, what sticks out as being the most important?

The 40 hours of audio tape recordings generated were transcribed and reviewed for themes, issues, points of concurrence and points of tension within the police data pool. This information in turn was reviewed alongside data pertaining to communication, and the needs of people with an intellectual disability .

During the course of the study the opportunity arose to survey through questionnaire, views on intellectual disability held by a group of police officers attending a conference at the Police Academy in Goulburn. The results of that questionnaire are reported in the next chapter (Chapter Three).

The voice of people with an intellectual disability

Although we initially intended to carry out consultations with people with an intellectual disability, circumstances suggested a change in emphasis. It became obvious that the Law Reform Consultations would provide a sufficiently large and informed data base comparable to the one we had envisaged building for police. The Commission's general brief is to gather and provide information and to make recommendations for others to respond to. Thus it seemed appropriate for us to carry out a set of complementary consultations with police.

In the 'Cleartalk' project the voice of people with an intellectual disability is captured through the 1992/1993 NSW Law Reform Commission documents on people with an intellectual disability and the criminal justice system. To this we have added an extended interview with the president of the Disability Advocacy Network in Wagga Wagga, observation of and participation in the Disability Advocacy Network, and extensive consultations with some fifty informants working in the field of intellectual disability.

Identifying issues

The review of the central pool of interviews with police led us to identify some sixty 'issues' which were refined into a more comprehensible and cohesive seven. The report focusses on these seven issues.

The issues are as follows:

1. Mental health and the person with an intellectual disability
2. 'Like talking to a child'
3. 'Questions, questions, and more questions'
4. Recognition
5. Communication
6. Responsive policing
7. Training methods

What follows is a brief summary of how the issue of 'Recognition' was identified and responded to. It is presented as an example of how each issue was generated and responded to.

Recognition was the most pressing issue to emerge from a preliminary cross reference of the literature, the expressions of concern of police officers, and the expressed needs of people with an intellectual disability. Defining the issue and responding to it was made more difficult by the complexity of the different perspectives and possible consequences to stakeholders. The concept of 'recognising people with an intellectual disability' is complex in that it raises questions like "Who needs to recognise whom ... and for what purpose?" "Who benefits by such recognition?" "How does recognising one facet of someone's existence determine perception of other facets?"."Do people want to be 'recognised'?" "Does classification in fact describe membership of a homogeneous group?" ... and more.

However, unless there is also sound, practical advice on what to do when appropriate recognition has been accomplished, the resolution of the issue makes no sense.

In order to respond productively to the focus of this project we needed to come to terms with the contradictions. One such bundle of contradictions was found between the Law Reform Commission study of the Lower Courts, the voices of intellectually disabled people captured primarily in the Law Reform Commission Research Report Number 3 on people with an intellectual disability and the criminal justice system, and the various perceptions of police officers. The latter were gained through interview and survey, as well as related pieces of significant literature. It should be noted at the outset that contradictions occur both within and between the focus groups.

Within the Law Reform Commission documents are expressions of desire by some people with an intellectual disability to be identified as such. The basis for this is that the person identified creates that descriptor for him/herself. The identification is made voluntarily for some perceived advantage such as being responded to sympathetically or with special consideration.

There is an equally strong voice against such voluntary self identification fuelled by the expectation that 'special consideration' would not be to the advantage of the person so identified.

However neither of these perspectives acknowledges the basic inappropriateness of classifying a collection of people as a single identifiable group. It is inappropriate for 3 reasons:

1. Attributing a single descriptor to a group of people allows for the all too easy accessing into and dismissal from the collective consciousness.

2. The people so classified manifest a wide variety of aetiologies (how the condition came to be) and existing conditions (how the condition presents itself).

3. Unless the classification suggests a productive response by others which is of direct benefit to the person or group so classified, the value of that classification is dubious.

The issue for police on the other hand is bound up with the operational imperative. "Identification: what for?" The interviews and surveys conducted with over fifty police officers revealed two major points. Firstly there is a lack of appreciation of what constitutes an intellectually disabled person. And secondly, where there *is* recognition, it has only been of the most obvious cases, that is, those who 'appear' normal are not considered as potentially being intellectually disabled.

The seven key issues that provided the focus of the report suggested topics suitable for police education and appropriate ways to approach them. These are the subject of Section 3 of this publication: The 'Cleartalk' Training Modules.

The research and development process of the project had several aims in mind:

1. to extend the voice of people with an intellectual disability in their relations to policing matters and to examine ways in which this might be achieved;

2. to make a case for a close examination of language in use in an obviously problematic situation;

3. to take the voices of people with an intellectual disability, the voices of police, and existing research findings in order to identify points of tension and areas of concurrence, and then focus on areas requiring new constructions and responses;

4. to generate materials consistent with each other at the levels of policy and review, pre-service education, on-the-job practice, and publicity;

5. to examine the concept of 'discourse rights' in a specific situation; the right of every member of society to be both heard and responded to in a communication code or system over which they have a degree of control, resulting in their participation and understanding.

It seems that the essence of such rights involves coming up with ways to carry out fair questioning, thus it seemed advisable to consider the effects and outcomes of questioning. In the search for ways to carry out fair questioning it became apparent that the results of such a search could also greatly help other vulnerable people who lack communicative assertiveness. Obvious examples are sexual assault victims, traumatised people, drug affected people, and people from non English speaking

backgrounds, where the people being questioned lack communication skills just as do those with an intellectual disability.

By creating the report and by explaining the process of its creation, we hope that others in the field will take up the invitation to interpret and respond to our investigations in ways different to ourselves. The research process has sought to generate data, focus perceptions and create connections. The training modules and publicity materials are only a selection of other possible outcomes and responses.

Although the brief of the project was to create support materials for police which would help them recognise and respond to the communicative needs of people with an intellectual disability, the resulting products as they now stand need not be restricted in their usefulness to either police or people with intellectual disability.

The next chapter reports on a survey of the perceptions of police officers of intellectual disability. This survey distinguishes between different kinds of perception and how these might be related to different kinds of communicative response.

Chapter 3

Police perceptions of intellectual disability: a window of opportunity for all.

At a conference at Goulburn Police Academy attended by a range of professionals associated with inter-agency co-operation (and child sexual assault), a brief questionnaire seeking to clarify responses and perceptions about intellectual disability was distributed. All conferees were invited to respond and of the one hundred and fifty, fifty two did so. Twenty five identified themselves as police officers currently working in a wide range of positions and ranks, with years of service ranging from four years to thirty three years. The replies to the questionnaire represent a range of responses and do not stand for either the conference or the NSW Police Service. Within that sample of officers who did reply there are however some proportional distributions of responses which reflect data gathered elsewhere or which suggest that they might benefit from more organised scrutiny. Within and across question responses the following propositions and issues emerged.

Given the invitation to tell what they understood 'intellectually disabled' to mean in their own words, officers gave responses which differed in several respects. The greatest number of responses (21 out of the 25) provided descriptions which were **normative** - that is, their definitions were based either on abstract notions of 'normality' (and 'abnormality') or equally abstract notions of 'achievement'. A small number (3) constructed **functional** descriptions which were expressed in terms of 'what people can do'. Only one (1) created a **responsive** description based on the ability of the 'other person' to respond within the communicative process. Some responses were a combination of the above response types which suggested a desire on the part of the respondent to avoid a single perspective only.

Examples of the three response types are presented below.

Normative

"A person who has difficulty understanding normal day to day concepts"
"A person with a lower percentage of intelligence than average"
"....stunted development"
"....inability to grasp basic concepts"
"....impairment of speech and actions"
"....inadequate communication skills"

Functional

"...the way they answer my questions"
"...not communicating their thoughts and ideas clearly (to me)"

Responsive

".....when I have to change my way of speaking"

These three sets of expression suggest different views of the world and these are articulated and discussed under headings 1-7 below. When regarded as positions on a continuum they help clarify what might be needed to effect a change along that continuum.

1. Thinking about communication

If as service providers we are interested in changing an existing situation by responding in different and appropriate ways to the needs of our consumers, then our perceptions and the way they are constructed are critical. If we constantly think of people with an intellectual disability as people with 'something missing', then our responses are likely to be grounded in despair at their inadequacy and subsequent dismissal of their competence. When our concepts of communication are based on the sending and receiving of messages rather than on the interactive complexity of intent, situation, competence and style then the position of the person with an intellectual disability is firmly established.

2. Intellectual disability and mental illness.

Unlike many other surveys this small questionnaire sample revealed only a small proportion (3 out of 25) of responses which expressly either associated or confused intellectual disability with mental illness.

3. Identification

As might be expected identification in both obvious and subtle ways reflected the range of definitions reported above. The majority of responses based their identification of people with an intellectual disability on obvious physical and behavioural characteristics. These were covered by such comments as:

"Their speech...mannerisms....out of the ordinary"
"The way they speak and act"
"Slow speech and confused looks"

These responses raise two concerns. One is that such descriptions are relative and depend totally on the interpretation of the observer. The other is that identification itself is a function of observation of the obvious rather than assessment of the functional.

4. Frequency

Another question asked respondents to estimate what proportion of the public with whom they had dealings were people with an intellectual disability. It must be assumed that the responses to this question were a direct reflection to the previous one on identification. Most responses (19 of 25) gave estimates of between 0% and 5%, with most of these (15 of 19) giving estimates of between 0% and 3%. The remainder distributed themselves as follows: 4 at 10%, 1 at 15% , and 1 at 25%.

5. Status

The respondents were asked to give some general indication of the role in which they had dealings with people they identified as intellectually disabled. The options suggested were victim, witness, complainant or suspect. The overwhelming response was as victims only. Responses which indicated victims and witness and complainants together came next, with the inclusion of suspects occurring, on the occasions when they did, as third on the list.

Twenty (20) of twenty-five (25) returned questionnaires provided a response to this question. Only two identified suspects/alleged offenders as constituting the primary population within their designated overall estimate. Only one suggested the highest rate of contact was with people as witnesses. The greater amount, seventeen (17), was divided between victims and complainants, with victims making up the largest proportion, thirteen (13) on its own.

The numbers are not comparable in that they represent different definitions of intellectual disability and are in response also to perceptions which put the proportion of the client population between 0 to 25 %. However the numbers do clearly indicate that, whatever the definitions and perceptions of people with an intellectual disability, they are nearly always seen to occur in the client population as victims and very rarely as suspects

By combining the results of perception under headings 3, 4 and 5 above we are confronted with a picture in which people with an intellectual disability are isolated by the perceptions of police officers. Police perceive that they exist in only small proportions, mostly between 0 and 3% of the population. Perception is based solely on obvious associated characteristics, and they are rarely seen to occur as suspects or offenders.

6. Dealing with difficulty

Officers were asked to make suggestions about overcoming difficulties in communication on those occasions, if any, they experienced such difficulty. Nearly all the respondents suggested 'time' as the key element. This was combined with or followed by 'simplification of language'. Calling a 'third party' of some sort for either interpretation or support was mentioned in just a few cases.

One mentioned

"...putting myself in their place".

Another suggested

"Repeating over and over the same information until they listen"

and another

"....being polite and staying calm".

7. Expressing concerns

At the conclusion of the questionnaire respondents were asked to voice any concerns or questions about communicating with people less intelligent than themselves. Of the twenty five (25) who had otherwise given responses to all the previous questions and propositions, ten (10) were left empty. (Filling out the questionnaire was not restricted in time)

Several responses were concerned with the notion of 'best practice':

"What are the best ways to deal with these people?"

"What is the best way to communicate with people with an intellectual disability?"

Some focussed on their need for information and training:

"I do wish there were more workshops and education about effective communication"

"What is really significant is that we don't have enough training in this area"

Other concerns were expressed in terms of the welfare for victims:

"There is a need for counselling for victims with less intelligence"

There was a large response however which centered around the notion of interactive responsibility on the part of police officers. They were concerned that:

"I may misunderstand the problem and disregard a situation that is of importance"

"... because I couldn't understand them I could miss something that was

life threatening"

"I need to ensure that someone is fully aware of what is being said"

"I need to understand their answers. It's my job to adapt, not theirs"

"... both parties could get frustrated and loose their patience"

"I might be insulting by being too basic"

And one officer mentioned the:

"... accusations at court that you've stuffed up for incorrectly assessing their level of understanding (when you're) not qualified to determine their needs"

The nil responses suggest at best bewilderment rather than disinterest, given that participation in the questionnaire was both voluntary and unrestricted in terms of immediate response time. The responses that were received suggest both a human and operational concern which can conceivably be translated into functional advice.

Throughout the responses to the questionnaire it was possible to discern the different ways in which 'intellectual disability' has been constructed by police officers. This is significant in that such constructions in officers' minds can determine the ways in which those officers, both as individuals and as a culture group, respond to situations involving such people.

For the sake of contrast and comparison, we have created three alternative profiles of definitions and their accompanying responses from police. The material for those profiles is extrapolated directly from the questionnaires and represents clusters of information about definitions, perceptions and responses.

	Profile 1	Profile 2	Profile 3
Definition of Intell ectual disability	Normative; expressed in terms of 'deficit' or 'abnormality'	Functional; expressed in terms of what a person can or cannot do cation between 'us'	Responsive; expressed in terms of what T need to do to facilitate communi-
Identification	Physical observation; expressed in terms of obvious and desirable characteristics	Perceived difficulty, expressed in terms of responses to questions	Assessment of communicative effectiveness, expressed in terms of cross checking
Response (possible and likely)	Either nil - reflecting lack of obvious characteristics OR Engage 3rd party specialist where characteristics are observable	Speak slowly and 'simplify' language	Find ways to facilitate communication appropriate to the situation

The three profiles above show how officer response and the consequences for the person with an intellectual disability flow directly from the definitions constructed by police officers. The implications for police practice are profound, not least for the person with an intellectual disability. These implications need to be clearly articulated to police officers during preservice and inservice training.

The next chapter (Chapter Four) sets out the seven issues as created by the intersection of a wide variety of information on police work, communication, and intellectual disability. The focus for such information are the perceptions of police officers as encapsulated in the 52 interviews carried out in a wide variety of settings and with officers holding a wide array of ranks and professional briefs.

Chapter 4

The issues arising

Well I've had 27 years as a police officer and I've had quite a few experiences over the years with persons you might strike in the street or whatever. You have to establish who they are and return them home. I've found at all times that the assistance that we can give them is greatly appreciated ... if it is approached in the correct manner. The main thing is our approach to them so that they are not frightened or anything like that so that they can then rely on us and approach us with a problem. I've had no contact with people with an intellectual disability as offenders. I've heard of it, but not personally ... But I've come across victims because they are very unsuspecting.

The aim of the 'Cleartalk' project is to provide support and training for police officers in the area of communicating with people with an intellectual disability. For this reason the perceptions of the people involved in the communication process had to be fully integrated into our inquiry. The issues which follow arise directly from interviews with police, from the voices of people with an intellectual disability, and were finally mixed together with concepts and insights about effective communication. It was obvious that certain themes wove in and out of the interviews.

These themes were linked by complex webs of ideas, and the consideration of the issues was a journey into a territory populated by sometimes very different and sometimes very similar attitudes. The points of convergence and divergence provided us with the starting points from which the educational materials emerge.

The recent study completed by Susan Hayes (Hayes, 1993) for the Law Reform Commission clearly demonstrates the need for early identification of people with an intellectual disability, and the punitive legal consequences which result from the absence of such recognition. The figures cited below show how dispro-portionately high was the representation from this group in presenting before the local courts. One hundred and twenty participants were interviewed in four local courts around NSW.

> These persons completed a form which sought demographic and background information; the Matrices section of the Kaufman-Brief Intelligence Test (K-BIT); and an abbreviated version of the Mini Mental State Examination (MSE). The researchers noted any obvious difficulties or abnormalities.
>
> (Hayes, 1993: viii)

> The K-BIT results show that 14.2% of the sample had a standard score of less than 70, placing them in the mildly intellectually disabled range of cognitive ability. A further 8.8% were in the borderline category. 25% of the sample were at or below a percentile rank of 10, indicating that 90% of the population are functioning better than these participants in the area of cognitive skills".
>
> (Hayes, 1993: ix)

The research also revealed that 31% of those who completed the mental state section of the survey fell below the cut-off score which indicates that further assessment of mental state should be undertaken. An overall total of 36 participants (30% of the sample) had results on one or both tests which indicate the likely presence of mental abnormality. This implies that they would have serious difficulty in comprehending or coping with court procedures, and may need further expert assessment.

The implications of the study are obvious, far reaching and volatile:

> ... lawyers and magistrates may find that one in four people appearing before local courts have intellectual deficits (including difficulties in verbal skills, memory, reasoning and understanding) which make it extremely difficult for them to participate adequately in the process of justice.
>
> (Hayes, 1993: 53.)

The volatility of the information collected in this study can be seen clearly when the results are placed beside police perceptions of the incidence of intellectual disability. There is a startling discrepancy between the statistical information of the Law Reform Commission study and the articulated impressions which guide police behaviour, although there was really little known, beyond the anecdotal, about police perceptions of people with an intellectual disability or their impressions of their communicative needs. This reflects the overall lack of information about police attitudes in N.S.W.

> Perhaps the outstanding feature of research in the police in Australia lies in the relative paucity of it, especially as compared with countries like Britain, the United States, Canada and some of the smaller European countries such as Holland. ... In seeking to generate some social scientific understanding of policing in Australia, therefore, we are working from a fairly barren research base.
>
> (Hogg and Findlay, 1988: 44)

There is a clear case for early identification and a sensitising of the police to the communication needs of people with an intellectual disability. There should also be an awareness of the consequences for the individual if recognition does not occur. This is another reason for the creation of 'Cleartalk' with its focus on the production of educational materials.

Within the criminal justice system the person with an intellectual disability confronts double jeopardy. If their disability is not identified they stand more than a good chance of being arrested and convicted. If they are a victim their stories are likely to be discounted. The influence which police officers can have over the future of these people is nurtured by the culture of policing.

> One of the features of policing most frequently noted in the available empirical research is the extent to which police behaviour is governed by informal rules and codes generated within the rank and file sub cultures, rather than the legal and management structure of police organisations. Closely related to this is the point that police forces are unique organisations to the extent that effective autonomy and discretion seems to increase as you move down the formal hierarchy. The autonomy of the rank and file officers derives, not from their constitutional position, but from the conditions in which much police work is carried out, namely, in low visibility settings, within which officers have considerable discretion, both legally and practically.
>
> (Hogg and Findlay, 1988: 48)

This viewpoint was supported by the comments of many of the officers interviewed. The individual officer must therefore receive the best quality training available, both preservice and on-the-job, to ensure that the 'occupational sub-culture' does not operate to exclude certain groups from equitable treatment under the law. This is particularly relevant when the needs of people with intellectual disabilities are considered. Culturally endorsed misconceptions combined with low levels of information are strong barriers to break through.

These problems and their interrelationships are given substance and examined under the following issue topics. Unless otherwise indicated, quotes come from the interviews with police. Quotes from people with an intellectual disability, unless otherwise indicated, come from the N.S.W Law Reform Commission Research Report Number 3 (1993).

Issue 1 Mental health and the person with an intellectual disability

Issue 2 "Like talking to a child"... and other inappropriate metaphors

Issue 3 "Questions, questions, and more questions"

Issue 4 Recognition and perceptions of people with an intellectual disability

Issue 5 Communication

Issue 6 Responsive policing

Issue 7 The educational needs of police

Issue 1

Mental health and the person with an intellectual disability

"Intellectual disability ... do you mean like they're actually retarded ?"

It was apparent that ideas about intellectual disability and mental illness were frequently confused. This was a mirror of the obvious confusion which exists within the broader society. Attitudes amongst police were varied but their descriptions of this relationship frequently began with the notion of a continuum of psychiatric illness. On this continuum people with an intellectual disability were generally positioned towards the less violent end:

I couldn't tell you that this is a psychiatric problem or if it is an intellectual disability because it is very hard. But there is a feeling ... I suppose people who are intellectually disabled are more apparent because they are psychiatric patients that are harmless ... or don't have some element of danger...

According to the Law Reform Commission Research Report (1993) a number of participants mentioned that police

...think that you come from institutions. Police shouldn't say that they will put you in an institution.

For many police officers the distinction between mental illness and intellectual disability was not clear:

And sometimes you might go to a job and you get people who are schizophrenic as well and might have a bit of a disability ... and it's just stuff they are making up. They believe it so you just play along with it. You just make them feel that yes you do understand and you are going to do something about it.

The consequences of confusion

The consequences for the individual of such confusion occur at different levels depending on the status of the person within the criminal justice system. For the alleged offender:

> There is small recognition of the great gulf between the two conditions, and the enormous differences in terms of aetiology, symptomatology, prognosis , treatment and management. In consequence the options which are available for intellectually disabled offenders at every step of the criminal justice process are likely to be inappropriate, especially if the deficit goes unnoticed.
>
> (Hayes and Craddock, 1992: 2)

For the victim or the witness with an intellectual disability their stories are likely to carry less credibility; they are less likely to see their testimony or case proceed to the next stage of the criminal justice system; and they are dismissed by being inaccurately grouped alongside people with a mental illness. Confusion therefore leads to the marginalisation of legal rights and this happens more by default than through deliberate intention.

The history of confusion

The history of the confusion has been traced by Ruth Luckasson:

> The original understanding of the relationship between mental retardation and criminality was that mental retardation caused criminality. Dr Henry Goddard, a respected authority in the field of mental retardation, declared in 1915 that mentally retarded people constituted a "menace to society and civilisation ... responsible in a large degree for many, if not all, of our social problems.

Dr. Goddard reported that 25%-50% of all the people in prisons were mentally retarded. The belief that mental retardation caused criminality led not only to 'grotesque' discrimination against individuals with mental retardation but also to their segregation and isolation in large institutions.

The revisionist view of criminality and mental retardation, popular by 1950, was that mental retardation had no relationship to crime, and the extent to which mentally retarded people were involved in the criminal justice system was a function of mental illness accompanying their mental retardation and not their mental retardation at all.

The modern analysis of the relationship of mental retardation to criminality admits of some complexity. While mental retardation cannot be said to cause criminality, we may have previously both over-emphasised (during the historical period) and under-emphasised (during the revisionist period) some connections between the two.

> Several possible explanations are offered including a suggestion that dimensions of mental retardation affect the types of crimes to which people have access, their ability to resist crime, and their ability to recognise crime.
>
> (Luckasson, 1988: 355- 356.)

The preceding historical tracking of the relationship between mental health and 'retardation' is helpful in that it explains the tradition of the ideas. However the confusion of the two or the causal linkage that may be established between the two does very little to safeguard the different behavioural needs of these two groups of people within the criminal justice system. The inequity falls particularly harshly on the person with an intellectual disability whose testimony, defence or complaint can often be overlooked if they are ascribed to a category which, by the terms of its definition as 'mentally ill', implies that they are out of touch with reality and therefore cannot be expected to understand or be offering 'truth'.

Present confusion between mental illness and intellectual disability

Intellectual disability was seen by some police as being a type of ailment which existed outside the province of the individual personality:
They can't control it ...it's just the way they are.

This attitude helped to explain why mental illness and intellectual disability were frequently linked in the minds of police officers. Both were seen as being the result of the individual's inability to cope with the stresses of living and the invasion of the personality by conveniently labelled social 'illnesses'.

Another explanation for the frequent confusion of mental illness and intellectual disability was put forward by an officer when he commented:

Because police are dealing with violent psychiatric patients and because they confuse mental illness with an intellectual disability and because they are always dealing with violent people, they start off on that footing and they go back to that. They go back to past experience or occupational experience.

Intellectual disability was frequently interpreted by police officers as a symptom of a range of mental illnesses rather than as a human attribute. This attitude influenced the identification and subsequent 'handling' of this corporate group. Intellectual disability had a status similar to manic depression or profound psychosis and demanded a systemic response on the part of the police that matched this definition:

I have considerable experience with people with an intellectual disability ... I come across people with a mental dysfunction nearly every day in some form or another: psychophrenia, manic depressives. Also other people such as Down Syndrome or just low intellect ... so we are all exposed to a wide variety of intellectual disability. Sometimes they are brought to our attention because of their behaviou. For instance just last week a guy turned up at the airport on his way to LA to spend some time with Michael Jackson. And we talked to him about this and what his problem is and in this instance we took him down to hospital and admitted him under an emergency order.

The police were generally sympathetic to the emotional plight of these people whilst naturally disbelieving of their stories:

You have to get their trust and talk to them in a way that gets the answers that you need to determine their mental state and the most effective way of dealing with it. I don't ask people questions about their illness, I ask them questions about their abnormal beliefs ... I suppose I humour them to get them talking and if they are talking about cosmic rays or the KGB taking over their brains or whatever I question along those lines to see how deep the delusions are. If you listen to them no matter what they are saying, at least you are being sympathetic.

The legal implications

Intellectual disability and mental illness were not neat, mutually exclusive packages of people and we did not set out to force this distinction. However the consequence of police officers automatically assuming that a person with an intellectual disability is also mentally ill can have unfortunate consequences for the individual in terms of the way in which the rights of that person are preserved within the criminal justice system. Most importantly the credibility of a person perceived to have a mental illness is a matter for investigation and debate. A police officer expressed the dimensions and influence of this dilemma in the following way:

There's a fair bit of confusion in people's minds about intellectual disability and mental illness. People get them mixed up. I've got an uncle. He was Down Syndrome. He was just slow. Like he had all the same feelings and emotions as anyone else but he was just like a ten year old. But if a ten year old goes and sees something that happens and reports it to the police they wouldn't say :"No you didn't see it" or "Your perceptions are wrong" or whatever. But often the people with the intellectual disabilities won't stand up for themselves, and when someone says to them "You are wrong" well they say "OK".....they'd just rather agree with you.

The failure of police to recognise the significance of individual differences coupled with a reversion to form and protocol on the part of the police officers often ensures that the communication needs of people with an intellectual disability will be simply overlooked:

I don't think our blokes are bad in dealing with people with an intellectual disability, but I don't think they are good either. I don't think people with mental dysfunctions are isolated. We have people who are uneducated, we have people who are physically handicapped, not mentally handicapped, and the police don't know how to talk to them either. You have people with mental dysfunctions in varying grades from severe Down Syndrome to just slow. As a rule I don't think coppers take the time to find out what they've got. They dive in head first: "name", "address" and "this is a tape recorded interview"

The human consequences of these attitudes and the implications for justice were condensed by one police officer when he said:

For people with an intellectual disability there are all these stumbling blocks. Just when you walk into the station the first thing you come to is the counter and you have to explain to the police officer there what the problem is. The first decision to do something about being a victim might be the only one you have. After that your courage fails you. You start to blame yourself and feel degraded.

Intellectual disability and physical characteristics

There was a tendency amongst some police officers to describe their recognition of people with an intellectual disability in terms of their physical attributes. (This theme is taken up in greater detail in Issue 4: Recognition).

Walking sticks....wheelchairs.... they usually have a disabled label on their cars.

How I recognise them is, well, mentally or physically. The one I know is physically...the way he walks and talks....

Intellectual disability and stress levels

One member of an advocacy group articulated the emotional stress which people with a mild intellectual disability could experience after being repatriated into the community:

It must be never ending for people with an intellectual disability...being shoved out into the community...neighbours not accepting them into the street or the housing place where they are, shop keepers finding them difficult to handle. Somebody just wants them to go away because they're all too much trouble. They look alright, they seem alright. They are often living independently....they may even have open employment with support. However they will go and try and have words with a department or police and they will blot their copy book and then they're gone. They've got strife all the time. I am sure the staff try and the police try with these people. But they are not comfortable with these people and therefore it is difficult for these people to make headway.

Trauma associated with either a criminal event or simply contact with police can compound the problems facing a person with an intellectual disability. Stress can produce hysteria, withdrawal or incomprehensible speech and behaviours. A parent of a 23 year old with an intellectual disability charted the emotional progress of their child through the criminal justice system and the implications for the preservation of this individual's legal rights. She maintained that the police questioning contributed to her son's extreme stress which in turn significantly reduced his capacity to understand and then respond to the questions being asked :

> I have found it impossible to get lucid answers to questions if he is traumatised or upset. He is either unable to speak, or alternatively says the first thing that comes to his mind...It takes considerable time and patience to obtain all the facts. I know he could be manipulated to say almost anything to his detriment.
>
> (The Probation Officer, 1990: 7)

A number of police officers acknowledged and explored the stresses created by police contact with people with an intellectual disability. Fear of the unknown, a lack of understanding about the role of the police, and anxieties created by their own involvement in an incident either as a

victim, witness or offender often produced alarmingly fierce reactions amongst this group of people. These police perceptions needed to be placed within the overall context of the unclear notions of what intellectual disability involved as explained above. However police did recognise the need for care and circumspect handling of difficult cases. The question remained whether these actions constituted part of the problem or part of the solution. The distinction between 'special care' and a discounting of individual rights remained a perplexing issue.

If you can talk to them you just have to talk to them on their level basically. You don't want to alarm them because you don't want them going off any more than they are. You want to calm them down so they are not going to hurt themselves or anybody else. It can be very difficult at times. You've got to try and find out what started it before you can put a stop to it. But those particular people, I wouldn't drag them back here and threaten to lock them up or anything like that because they are not responsible for what they are doing.

A number of police officers recognised the stresses that contact with officialdom could have on people with an intellectual disability. In particular they referred to the profound sense of frustration which can accompany a lack of comprehensio subtly mixed with real fears about personal safety on the part of the person with an intellectual disability:

In the case of offenders on a lot of occasions they don't want to be offenders. Sometimes communication between that person and a government employee becomes a bit hostile and a bit heated and one thing can lead to another. It can end up with offensive language, criminal assaults, malicious damage. Sometimes people just get so frustrated that they can't get their message across and assaults happen and they break things and it can just go on.

> The general failure to distinguish between the mentally retarded and the mentally ill causes the most extreme instances of deprivation of rights among retarded people. Nowhere is this more evident than in cases where a mentally retarded person is charged with having committed a crime.
>
> (Haggerty et al, 1972: 65)

The lack of distinction between mental illness and intellectual disability and the consequences for the individual within the criminal justice system have been explored in the literature and occupy the emotional energies of a number of professionals working in the field.

The issue of police assessment of the type of disability or mental illness has been pursued from a number of different positions. From the perspective of the psychologist, the advocate, the parent and the legal practitioner there emerge some common themes. Firstly, it is quite clear that no magic formulae exist which can help police in this task other than a general sensitivity to the problems and an improved level of education about the issues involved.

The problem of distinguishing between mental illness and intellectual disability is further compounded by the fact that in a lot of cases intellectual disability can be accompanied by some degree of clinically identified mental illness.

> As many off those with an intellectual disability may also suffer from a minor form of mental illness it is not possible with a brief assessment to differentiate between the two causes for their disturbed behaviour. Assessment difficulties are exaggerated by a number of factors which operate when such a person is presented by police to a police surgeon:
>
> - There is rarely any knowledge of past behaviour or history.
> - There is frequently a concurrent presence of alcohol or other drugs.
> - There is usually difficulty in communication with the patient.
> - Communication with the Department or any institution is frequently difficult if not impossible.
>
> These assessments often have to be made at inconvenient times of the day eg: evening and night when there is no possibility of obtaining any past records. The concurrence of violent or a threatening manner.
>
> (Bush, 1987: 4)

The writer goes on to explore the effects of such problems and concludes that: "a number of intellectually disabled persons are quartered, restrained or constrained in institutions which are unsuitable for them and without proper supervision." (Bush, 1987: 8)

Police Officers are the first point of contact between the person with an intellectual disability and the criminal justice system. As a consequence of this contact police will necessarily carry out a the 'screening ' function. They must decide whether the person they have contact with is mentally capable of enduring the rigours of the criminal justice system and if not, where the person should be referred for care, treatment or punishment:

> ....the police have more contact with the mentally disordered than all other mental health and social service occupations combined. Although much of it is initial contact, it places the police officer in a position as a mental health screening agent who must decide whether a person should enter into the criminal justice system, the mental health system , or be left in the community without official intervention. Thus, police judgements can lead to an involuntary commitment process which, once begun, may move inexorably towards confinement in either a prison or a mental hospital.
>
> (Fogharty, 1991: 45)

Issue 2

"Like talking to a child"... and other inappropriate metaphors

The lack of information about people with an intellectual disability is not confined to police, but is characteristic of the community in general. In addition, police officers have only limited training in how to communicate with the increasing number of people with an intellectual disability. These two factors may account for the proliferation of myths and legends concerning people with an intellectual disability.

New definitions of intellectual disability and new perceptions of the extent of the problems confronting people with an intellectual disability have made apparent the need for everyone to make sense of these issues. However this is often difficult becuase there are inadequate parameters and people are forced to operate in a kind of information vacuum.

Communication and childlike behaviour

Police officers have tried to in their own ways to solve this problematic situation and a frequently used way of describing the attributes of people with an intellectual disability has been the metaphor of the adult as a child. The stereotype has the effect of providing a framework within which the behaviour of the person with an intellectual disability can be located, described, and then dealt with.

The behavioural extension of the metaphor was at its clearest when the issue of communication was discussed. Police officers often described their interactions with people with an intellectual disability in the following way:

Often it's more like talking to a child ... you are talking to a person who has the brain capacity of a child or just like talking to a child. And that's the way you pick it up.

Well I've got to go right back to the beginning because I'm not 100% sure that they've understood everything that I've said and it's very much like dealing with children. You've got to be very careful there as well because when you talk to them it depends on the way that you phrase things because they'll pick up on certain words and the next thing you know they're agreeing to something. And in actual fact it never happened at all... they're so open to suggestion. But that depends on what sort of handicap they have.

Police Officers would have to be able to put themselves on an equal footing or the same intellectual level...to come down to their level. Because my understanding of it and my dealings with intellectually disabled people is

that they're on a level below their age...like they might have the mind of an 8 year old but they're 20 years of age. In actual fact we have a very good friend who is intellectually handicapped and we have no problems communicating with her...we speak to her on her level. She's a girl of 22. However she has a mind around about five.

Towards more contact

Some police officers who had had extensive personal contact with people with an intellectual disability were sympathetically critical of their colleagues' attitudes:

I think with police they need to realise that these people with an intellectual disability are normal people who are slower than the average person. A lot of police don't treat them that way though. They treat them as a child and don't take any notice of them. And that's where I think that if the police have a more personal contact with them, more often ... a Training Day for example ... instead of just having someone come down and talk to us about people with an intellectual disability, you could go out and spend a day with the people and you could meet some of the people ... they often give us the kind of information that is worthwhile, but police just don't take any notice because they don't know what to do with it.

In answering the question: "Should police have to learn about what intellectual disability is and is not? What should be involved in this training?" one of the respondents within the Law Reform Commissions' consultation supported the concept of increased contact by saying:

The police should be made to talk to people with an intellectual disability....to have a special unit with special training to understand how people with a disability react.

The Research Report outlines details for more desirable contact with people with disabilities, such as talking to them and working with them. These were seen by the respondents as the best way to learn about intellectual disability.

The attributes of a child and intellectual disability

The metaphor of the child was used to describe some of the perceived specific attributes of people with an intellectual disability. For instance the difficulties which police officers experienced when interviewing people with an intellectual disability were often explained by reference to their inability to concentrate for long periods of time, their lack of comprehension of what was happening around them, or their lack of understanding of the language that was being used. These dilemmas were classified in the same categories as those experienced when interviewing children:

I think the problem is that you have to get their attention. Their attention span is like most kids...they wander off, so what you need is to have their attention so that you can get through what you want. You need to come down a level and it's just like speaking to little kids at school.

People with intellectual disability as slow learners

A number of police officers identified people with intellectual disabilities as being 'slow learners'. This broadened the debate and brought out questions about where the concept of the 'slow learner' intersected with the reality of the person with an intellectual disability. This also introduced a new degree of sensitivity into the interviews. It was here that the plight emerged of the highly vulnerable group of people with moderate or mild intellectual disability but no distinguishing physical features.

Some of the girls that I went to school with didn't look any different from myself and they were our slow learner girls ... they didn't pick things up quickly and one particular girl always agreed with you no matter what you said.

The development of a broader definition of intellectual disability reinforced in the minds of some of the police officers differences rather than deficiencies in the people they were dealing with:

Like you go up to some shop assistants and they won't be quite there or they'll just be a bit slow. You'll ask them to do something and describe an offender or something and they might not be quite able to do that. Or somebody beside them will give a completely different description or will have seen them in a completely different way. And there are members of my family that have been a bit slow in respect of intellect and just dealing with those people has been an interesting experience. Just in the fact that they take that bit longer to respond. You just don't quite know if they are sure of their answers or if they're just hesitant in the way that they speak. You're not sure if they know just what they're talking about. That's in relation to police work anyway.

The general lack of clear definitions of intellectual disability posed a problem for a significant number of police officers. A number tried to articulate their confusion by exploring the differences between intellectual disability and 'slowness'. The conclusion to be drawn at the end of the exploration was that intellectual disability is seen as a relatively infrequent occurrence within the general population. There are a lot of people classified as being 'slow' but only a few classified as being 'intellectually disabled.':

I don't know what you think but I don't think that we have that many people that we would class as intellectually disabled. I've seen a lot of what I consider to be not 'the full quid'. They're not intellectually handicapped. I wouldn't class them as intellectually handicapped. However they don't seem to have their full faculties about them and I don't know where intellectually handicapped starts.

However, for other police officers people with intellectual disabilities had to provide observable and recordable proof of their disability otherwise they considered that it did not exist:

Well I can only say that I have come across very few people in the prison system with what I would consider intellectual disabilities. In 14 years I might have seen three that stand out as being different to the rest. That goes back to 1979. Certainly some were what we term 'slower' than others, but I wouldn't class that as intellectual disability. That's not what the scholars tell us.

A truncated or unsatisfactory education was considered by some police officers to produce the same effects as the more observable intellectual disabilities :

You get a slow learner who has trouble reading and writing. Then he has a disability doesn't he! So you need to help them as well.

The ways in which these people, the 'slow learners', could be helped were practical, rarely prescriptive and were totally dependent on individual, unguided recognition. Police struggled over this unmapped territory:

Patience I think is your biggest problem. From my perception coppers as a rule are impatient. I think that if they slowed down a little and were a little more aware of who they were talking to and what the capability of that person's brain is, they'd do better. There are some people that I would not call mentally handicapped but they just don't have an education. Some people might call that mental dysfunction but its not a real dysfunction. The person hasn't had the education so the person doesn't have the knowledge behind them to equip them well. And there are a lot of people that these guys on the road are dealing with.

The term 'slow learner' has been borrowed from the world of special education and is one which was used by one of the informants during the Law Reform Commission's Consultation. In response to a question concerning police knowledge of intellectual disability, the respondent said:

You could have a conference about people with disabilities...how people with disabilities feel, how police can understand us, how police can react, we could get people to support us to tell police we are slow learners.

The police officers who used this terminology echoed Eleanor Dark's literary description of the weary doctor who reflected on:

> ... the 'inattention' of little children in school. What precious, delicately expanding filaments of awakening consciousness do we destroy to force into their reluctant minds the harsh reality of twice two are four? At what stage does mental discipline become coercion and repression? Were these involuntary excursions of his own thoughts inspirational, to be followed, or merely a senile 'wandering; to be controlled? The released mind, he thought, taking off his spectacles and settling himself wearily in his corner, had a strange habit of following easily to their logical conclusions, tempting by paths of thought which became darkened and confused

assessments and adjusting the communicative style to match the capacities and needs of the other person involved. A simple child-like linguistic reversion on the part of the interviewer does not achieve this.

Secondly, even if we could sustain the accuracy of the equation between childhood and intellectual disability it still masks a lot of the research done recently on the reliability of children's evidence and the different modes in which this evidence can be collected.

However if we accept the notion that both children and people with an intellectual disability are vulnerable, then we can abstract some of the generic lessons learnt from interviewing children and apply best practice to yet another vulnerable group.

The memorandum of good practice on video recorded interviews with children witnesses for criminal proceedings (H.M.S.O., U.K., 1991) was constructed in direct response to the perceived needs of child victim witnesses. As a result of a wide consultation process with a range of professionals and practitioners around the world, the document provides advice on 'best practice' with such witnesses. It recommends the following four phases of an interview:

- Phase 1 Establishing Rapport
- Phase 2 Free Narrative Account
- Phase 3 Questioning
- Phase 4 Closing the Interview

This publication is concerned primarily with obtaining the best narrative from children for the purposes of informing further actions within the criminal justice system. It has been structured around the concepts of vulnerability and communication and provides clear policy directions for the interviewing of people with an intellectual disability.

When a person with an intellectual disability grows to be an adult the suggestion is not that they are still 'like a child' but rather that they have not developed a whole series of skills, many of which manifest themselves through language.

Credibility becomes the casualty

The metaphor of the person with an intellectual disability as being just like a child is one of the more gentle community myths but one which nevertheless has a profound impact on the credibility of the accounts offered by such people within the criminal justice system. The Criminology Research Council Report on 'Silent Victims', which examined the nature and extent of crimes against people with intellectual disabilities and their experiences as victims within the criminal justice system, reported that:

> by conscious reasoning. It was a kind of mental sleep walking, when the thoughts unhampered by a directing consciousness, led safely and confidently through places where reason might boggle, and custom drag upon them.
>
> (Dark, 1990: 289)

The descriptive metaphor of intellectual disability as equating with child-like attributes is one which permeates literature and conversation. Those who use the metaphor do so to help explain the perceived communication difficulties, social inexperience, naivety and vulnerability of people with an intellectual disability when they connect with the criminal justice system.

Mental and emotional ages of people with intellectual disability

The perceived emotional and mental ages of the individual are used as the guideposts for communication rather than a reference to the chronological age of the person involved. It is a genuinely sympathetic attempt to categorise and then deal with people. It is an excellent place to start, and demonstrates a commitment to changing the communicative style required to acknowledge the needs of the person with the intellectual disability.

In other ways however it is constraining, inaccurate and out of touch with a lot of the information relating to the interviewing of children and the consequent reliability of their accounts.

The inaccuracy of the metaphor

It is also an inaccurate description of intellectual disability on two levels. Firstly the underlying assumption that children's behaviour and intellectual disability demonstrate an equivalence is not sustained by research. The notion that the population of people with an intellectual disability are a slow motion and lower geared version of the rest of the population, and hence really children at heart and mind, is not supported (Miller and Chapman, 1984: 545). Miller, Chapman and McKenzie (1981) argued that a single systematic pattern of language and cognitive development is highly unlikely given the heterogeneity of the population (Ellis,1979; Zigler, 1969).

> Different syndromes could result in diverse perceptual, cognitive and information processing skills resulting in quite diverse language acquisition patterns, differentially affecting rate and sequence of linguistic characteristics in both comprehension and production (Cromer 1981)
>
> (cited in Miller and Chapman, 1984: 539)

This suggests differences in developmental patterns when compared with those of children, as well as differences in the resulting conditions. A distinction between those conditions as they affect communication can be made by asking "What can the person do, respond to, or achieve to organise meaning with certain people under certain conditions?" For those carrying out operational tasks such as taking a statement, gathering evidence, or getting answers to questions, this means making on the spot

.....people with intellectual disabilities who did report offences were frequently victims of community myths which barred them from access to the legal and criminal justice systems ... and that victims who were intellectually disabled found it very difficult to be regarded as credible witnesses by workers in the criminal justice system.

(Johnson, K., 1988: 136-7)

Communication, children and people with an intellectual disability

However if we acknowledge the metaphor as valid, then how should we be looking to relate to people with an intellectual disability?

In its project on 'The evidence of children and other vulnerable witnesses' the Law Reform Commission of Western Australia focussed on reforms within the Scottish criminal justice system which were designed to safeguard and enhance the rights of these groups of people.

> Reforms recommended in this report, if applied to such witnesses (who are disadvantaged by having to give evidence in court in the traditional manner) may enable them to give evidence, or improve the quality of evidence available to the court
>
> (LRC W.A., 1991: 109).

The reforms included a wide range of technological and human solutions to the problems encountered by less communicatively competent members of the community. Suggestions included the use of closed circuit television screens, pre trial hearings, preparation and court support, the admission of videotaped evidence and the provision of special courtroom procedures. Obviously in the case of people with an intellectual disability, access to these special provisions depends on the recognition of the disability by a police officer in the first place. We return yet again to the theme of recognition.

The Pigot Report (U.K.,1987) recommended the creation of a special category of witness with accompanying special provisions:

> A court should be empowered in respect of any person declared by the court to be a 'special witness' to order any one or more of the following:
>
> a) that appropriate arrangements be made for the witness to be prepared for the giving of evidence;
>
> b) that support person, approved by the court, be permitted to be present and seated near the witness while the witness is giving evidence ;
>
> c) that in a criminal trial:
>
> (i) the 'special witness' should give evidence over closed circuit televisions from a room outside the courtroom or
>
> (ii) while the 'special witness' gives evidence in court, the accused in a room outside the courtroom, should see and hear the 'special witness' giving evidence by closed circuit television instead
>
> d) that in an appropriate case, in a criminal trial, the 'special witness' should give evidence in advance of the trial at an informal hearing of the kind recommended above for child witnesses
>
> (Pigot, 1987: 122-3.)

These recommendations for reform to the criminal justice system, far removed from the responsibilities of the police service, would enable police officers to legitimately collect evidence in other than the traditional and often ineffective ways.

Issue 3

Questions, questions, and more questions.

Interviewing Intellectually Disabled Victims

Indicators of intellectual disability include :
- short retention span
- difficulty understanding questions and instructions
- responding inappropriately or inconsistently to questions.

Consider the following:
- ensure the victim knows the reason for being there
- establish rapport and make the victim feel comfortable
- use simple language and ask short questions
- frequent short breaks may help the victim's concentration
- the victim has the right to have a support person present, who is acceptable to the victim
- it is suggested that the statement be taken in question and answer form."

(Commissioner's Instructions, 67-4, Valid as at 8th of November 1991)

Police attitudes and ideas about questioning people with an intellectual disability were divergent and thoughtful. All those interviewed recognised the critical influence which questioning had upon the progress of the individual through the criminal justice system. When the need was recognised they attempted to modify their techniques to suit the person, within the prescriptions imposed by the legal system and police protocols.

However the extent to which issues surrounding questioning have any relevance for people with an intellectual disability is contingent upon the police officers involved first recognising that the disability exists. The voices of the people speaking out from the Law Reform Commission Report frequently maintain that police knew little about the variety, intensity and implications of intellectual disability. Within this context recognition as such is not a priority or concern for the officers and their questioning methods would be likely to remain unchanged.

The concerns expressed by the police are often not translated into actions which impinge on the vulnerable group of people with mild or moderate intellectual disabilities. Recognition and the consequent appreciation of the communication problems of people with an intellectual disability were therefore inextricably linked to the types, styles and content of questions which police asked.

Questions and people with an intellectual disability

The interrelationship between questions and people was explored by one officer when he said:

You'd like to think that you knew what makes up an intellectually disabled person and the first thing that springs to mind is how they responded to

your questions. If you could see that puzzled look or something that they didn't quite understand, you would say: "Why don't you understand? What do you understand me to be saying to you?" Sort of get feedback from them about what they understand that you are talking about ... and that's the way we usually approach the types of questions we ask in interviews.

The difficulties associated with the need to ask questions of people with an intellectual disability were explored by a number of police officers. The problems encountered were the result of a mixture of police protocols and individual intuition. Police often felt the need to be more exploratory and human in their questioning but knew that the constraints of the next level of the criminal justice system demanded responses which would be sustainable within a courtroom. This produced an ambivalence and tension in the interview situation:

You need to believe what they say and show that you believe what they say to encourage them to tell you things. But at the same time you have to weigh up that doubt aspect because you need to ask them questions to find out if they actually have a problem or if they are hesitant ... without offending them which is quite difficult and complicated. I don't usually cross check answers because usually when we take a statement from somebody, it's in their words and that's up to the court to decide whether they are a bit mixed up or not ... that's their job. All we do is deal with the people - take statements from them, victims or offenders, and then that's up to the court to worry about their cross examination. We just take what they say and we can have doubts in our mind, but we really shouldn't express those to the extent that it influences anything that is written, because it's their statement and it's what they want to say, rather than what we want them to say. And certainly you need to ask questions in a simpler form, in a way that they can relate to. I mean you need the information to prove an offence or whatever, just to make sense of it sometimes - but you need to ask them in a way they can relate to that.

The demands of the criminal justice system and questions

The relationship between questioning people with an intellectual disability and the demands of the courtroom were perceived by some police officers to unproductively constrain the types of questions asked. Similarly the patterning of questions prescribed by the law prevented some officers from cross checking information gathered. One officer was highly critical of the procedures:

The person is terrified, overwhelmed. The people they have on the other side of the desk that they want to interview are either witness or criminal or victim. And they are treated in those brackets. And they feel threatened ... Our rules of evidence are such that you can't ask people leading questions but people with an intellectual disability are much more agreeable. With people with an intellectual disability you might ask a question and then later on you might ask a similar question and it's a

totally different answer, and they don't match, and you try to give that to them and it just throws them. I think a lot of our coppers don't like that .....like the past is the past and they have got those questions so we don't need to go over it again. They give themselves a list of questions in their interview ....'I must cover these points to prove my offence', so they would never go back on themselves.

Simplicity of questioning styles

Based on their experiences, police offered various technical suggestions about questioning people with an intellectual disability. Simplicity was felt to be a key element in making the process of questioning more effective:

Some of them just don't understand the larger words we normally use .... and you've got to put that in a simpler form. Instead of saying 'statement' that they might not understand, you could say "Tell me what happened...I'd like you to tell me your side of the story", or something like that. And just write as they talk. That's usually the best way to approach it. Because they don't feel so threatened. They're telling what happened during the incident.

Another officer commented that police needed:

... to talk to them, not down to them - but in simple language which they'll understand - slowly - you might have to repeat yourself a couple of times, give them time to pick it up.

When speaking about the problems of being a victim with an intellectual disability, two contributors to the Law Reform Commission consultation supported this police viewpoint. They suggested that the following would help them to be heard:

Law people... don't use big words

and

You need someone to sit down and hear what happened - someone to talk.

In response to the question relating to the level of police knowledge about people with an intellectual disability one participant replied:

If they are interviewing you, its hard - you can't understand their words, they don't want to do anything about it.

Another person commented that:

Police should keep things simple.

However the concept of simple questioning is a little like the concepts of 'quality education' or 'parenthood'; no-one would dispute their general desirability but it is their definition beyond the rhetorical which challenges us all.

The tendency to agree

The tendency for people with an intellectual disability to agree to questions and produce a high proportion of 'yes' answers was mentioned by both police and the people participating in the Law Reform Commissions consultations.
When asked during the Consultation about the final question contained in the police caution, a number of people maintained that they would answer in the affirmative even if they did not understand the content. The reasons which they offered included:

The police might keep repeating the question until the person gets the idea to say 'yes'.;
They might be afraid to say 'no' in case they think that they are silly.;
If they are not sure, the volume of the policemen's voice may convince them to say ' yes' - without really understanding.

The police officers interviewed often commented on this tendency but offered different rationalisations for its existence and some strategies for ensuring that comprehension rather than intimidation was the outcome:

We ask questions and we give them a formal caution, and at the end of the caution we ask: "Do you understand?", and they say "Yes" or "No". And more often than not they just say "yes". "Yes" is a short answer. And then you say: "And what do you take that question to mean?". And then you get them to explain back to you what that caution means to them and in the cases of children and the intellectually disabled, more often than not they'll say: "Oh I don't know" or just say "Yes". So then you have to go back through it and bring it back a step at a time, and it's a very formal thing and very complex, and it's quite a long thing and to take it in so quickly, it's very difficult. I couldn't imagine even a normal adult understanding it first off. I do it at all times, not just with children. With all offenders. I back check and say: "What do you understand that to mean?" And they'll come back to you with: "Oh I don't have to say anything if I don't want to". If they don't understand, you have to go through again and bring it down a level and get them to try and understand the concept of the fact that you don't have to say anything - that's the basic concept. You have to because being a police officer and being in a police station, people get the feeling that :"Yes I have to say something. I've got to tell them what's happened". And that's not necessarily the case.

Some police officers were aware that this was a characteristic tendency in people with an intellectual disability but for reasons of work stress, it may pass unnoticed by their colleagues:

My mother is a physiotherapist and so I had a lot to do with people with disabilities, both physical and mental. But when I started work out on the road and I came across people with an intellectual disability, the people I was working with just didn't know.

You go to a burglary , after a theft, after domestic violence, after another burglary, then another domestic violence, and then you find a person under 18 who is Aboriginal and is drunk, and you can't find the parents. And they've all got these rights, and there are all these things that you must do and they get all frustrated. And then they'll get a child that has a mental dysfunction but they don't know because they're so worked up themselves. And then they come across this person who is agreeing with everything that they say and they :"OK we'll write this bloke up. He's fine". Who's got the time?

One officer explored the possible reasons for acquiescence when he said:

You are dealing with people who for many years have been told what to do... and for many years on top of that have been made to appear fools when they don't understand. "Oh you're nothing but an idiot" people say....they're embarrassed not to understand.....so they are going to agree.

The consequence of acquiesence

Both police officers and other people who participated in the Law Reform Commission's consultations agreed that there was a tendency for people with an intellectual disability to agree rather than disagree with lines of police questioning. The literature supports this finding with some interesting qualifications. One study entitled 'Acquiescence in the mentally retarded: do they just say 'yes'? (Palma and Schare, 1989) began with 180 'mentally retarded' adults who were asked 30 yes/no questions in order to find whether their indis-criminate 'yes saying' was generally a function of the yes/no format or whether it represented the more general phenomenon of acquiescing to the perceived wishes of the questioner.

The results of this study indicate that despite the simplicity of asking 'yes/no' questions, the response of the target group to these or any question must not be accepted at face value, but viewed as possibly having been influenced as much by the person's tendency to comply with the perceived wishes of others as by fact. Where a 'no' response was perceived as being desirable, then that was the answer given, even though it contradicted itself or previous information. The focus here is that it is not saying 'yes' that is the driving force behind the response to 'yes/no' questions but rather acquiescence which can manifest itself in either 'yes' or 'no' responses in the experimental situation However because of the general shape of talk, the response occurs as 'yes' in more natural and untested situations.

For the individual with an intellectual disability the consequences of police not recognising this tendency to agree were contextualised by police officers by reference to their own communicative limitations. Police officers who understood that the tendency to agree was more often a sign of non comprehension than it was of genuine compliance, were often baffled about their capacity to intervene and helpfully influence this path of events:

You see I can say something to you and you may not understand what it is that I'm saying. So it's bad enough with two people who are presumably not too badly off. But you get someone like this who will say :"Yes I know what you are saying", and you know bloody well that they don't. And a lot can just slip through.

Time and questioning

Police attitudes towards the amount of time that should be spent questioning a person with an intellectual disability varied. Some police officers felt that they should adhere to the protocol and complete the interview as quickly as possible. The responsibility for the provision of poor quality or non responses to questions was seen to lie squarely at the feet of the respondent rather than with the skills of the questioner.

Time and patience doesn't really come into it. You have a job to do and you do it the best way you can. It's not as if you can sit down with them all day. You have to be reasonably forceful with them. Find out what is going on and what the problem is. If the person wants to carry on and not tell you what the problem is then I leave. I'm not interested. If they want to tell you something they will tell you.

Most police officers however, recognised the importance of taking time and patience with their questioning. The extent to which the rigours of policing allowed for this time allocation was another issue but wherever possible the sentiment was expressed that:

You may need to take a bit of extra time. It might take them a bit longer to settle down and get their bearings or to just understand that you are not hurting them. You are just going to ask them a few questions.

These attitudes were supported by the propositions put forward during the Law Reform Commission Consultations. People commented that police could make the process of questioning less overwhelming if they just slowed down their pace of conversation a little and listened to the answers with the enthusiasm with which they formulated their questions. Some of the concrete suggestions included:

Such as talking to you -not fast;
Listen to what (people with an intellectual disability) have to say, give them time-they (police) need to know that you are disabled and can't talk too fast.

Fear and police asking questions

Fear of being questioned by police was an issue which was taken up during the Law Reform Commission consultations. The general public has a communal fear of police stations fuelled by media reports and the custodial perceptions about police. The pervasive effect of TV and film portrayals of

police as being a violent race apart from the rest of society produces feelings ranging from animosity through to a generalised sense of anxiety. Police officers are usually seen as the harbingers of bad news. For people with an intellectual disability the powerful cocktail of media images mixed with a profound lack of contact with police often accounts for their expressions of disquiet about dealing with police officers.

A number of participants thought police stations were scary. Reasons for being scared included the uniforms and guns. Other comments included :

You get a real scary feeling going through you if they ask you questions.

When I had my bike accident I was scared when they were interviewing. The policeman said: "Give me one good reason why I shouldn't lock you up" and he was waving keys around.

The stress created by questioning a person with an intellectual disability was acknowledged by police officers. They frequently felt that this stress would break through in different ways and that no single description of the accompanying behaviour was appropriate:

I can see with the intellectually disabled this being a very major issue. Not understanding what their rights are and what is actually happening to them. Immense stress. And for the intellectually disabled the stress can do different things to them. Like it can make them laugh and it's a different reaction. For the intellectually disabled the stress level will be higher because they don't understand what's happening.

If people come in and they are very frightened or very agitated that compounds the problem and it makes it more difficult for them to think what they are going to say.

If someone is of lower intellect they can be either overawed by a situation, sometimes too willing to cooperate. Or they can be aggressive. So we need to reassure them as you would anyone.

A number of police officers recognised the value of ensuring that there is a calming environment for people with an intellectual disability. They also appreciated that there are communicative links between emotion, environment and the ability to process information, and they recognised how weak and tenuous those relationships can be. Particular styles of questioning were regarded as aggravating this situation:

They're already tense and flustered. They don't need extra jargon. It just makes them feel like a fool because they're not understanding.

The frustration at not being able to penetrate the trauma barrier was expressed by a police officer in the following way:

I have dealings with Down Syndrome people and that is really hard. I've

had one fellow come into the station and we just couldn't understand him. And he was so urgent - pointing, wanting to get his message across. "Something's happened. Something's happened". And we spent ages trying everything ... tried sitting him down and trying to get him to slow down. And we could understand some words but not the others. A nd that was really hard. All of us tried and then he got so frustrated that he left.. And we followed him, but he just went back to his house. You panic. It could be that he's just upset about something that we could treat as fairly minor, or something has really happened and he's the only one who can tell you.

Frustration is poignantly captured by one officer when he said:

They've answered all your questions but they can't tell you the story at all.

Different types of questions

Questioning is a fundamental part of a police officer's tasks. The questions asked have a number of different characteristics and functions. There are general exploratory questions asked during interactions which occur informally. Discussions in the street, requests at the station, and day to day conversational questions occupy a large part of policing activities.

There are also questions whose form is determined by the rigours of the criminal justice system. Evidence has to be collated and presented in a particular kind of way if the case is to proceed. In this context questioning equates with evidence. Police officers echoed these prescriptions in their commentaries and at times described their sense of frustration at the lack of effectiveness of present practice.

The *Policing Issues and Practice Journal* adopts a different perspective on questioning and the gathering of evidence:

> The vast majority of your work often results in a court appearance, and the need for you to adopt a professional approach is paramount. A well prepared statement with well presented evidence will improve your confidence, credibility and in turn, your professionalism.
>
> (Penteado, 1992: 1)

Questioning and legislative requirements

The 1987 legislation requiring written statements in all committal proceedings has obviously created extra pressure on police during their appearances in court. The article quoted above offers suggestions and formats designed to "...improve your preparation for court". However such preparation delineates the detail so finely that the nature of the questioning is enmeshed within a web of planned information gathering, and there is little room to conversationally stray from the path. Although these pro-formas satisfy the demands of increased police professionalism, they are a long way from being ideal in the area of questioning people with

an intellectual disability.

> In the event of breaking the law, witnessing criminal events or being the victims of crime, agents of the criminal justice system need to learn and develop appropriate ways of dealing with intellectually disabled persons.
>
> (Cahill,1987: 1)

Cahill's list of problems experienced by intellectually disabled persons in the criminal justice system is a clear warning that 'rules' and 'procedures' need to be applied in terms of their intent and effect as well as the protocols which they support. This is especially so when it comes to asking questions and getting answers, especially if those answers are expected to carry weight and credibility in a variety of subsequent processes.

Dealing with difference

However the constant tension and apparent conflict which surrounds the notion of 'dealing with difference' is certainly not ignored within police literature. The same journal which prescribes the collection of data for police statements in court devotes twelve pages to the issue of dealing with difference:

> ... the successful exercise of this communication skill already requires that daily we have to cross barriers that are due to differences in age, social class, educational level, occupational background, sexual preference and the like; the manner in which we respond to persons, be they complainant, victim or offender is subject to close scrutiny and we have a responsibility to maintain the highest standards. The success of this communication skill requires that sometimes we must step aside from our own limited aspect and not be biased by our own preconceptions.
>
> (O'Callaghan, 1993: 22)

This position is substantiated by Instruction 37.14. of the New South Wales Police Commissioner's Instructions in *Guidelines for Questioning* which directs police officers to "..take appropriate measures to ensure a fair interrogation." This directive is an acknowledgment of the general right of all people to be listened to and spoken to in such a way that they can both understand and respond. 'Fair' is being interpreted here as creating the circumstances where police can fulfil the obligations of their duties and where members of the public, whether suspect, victim or witness, have adequate opportunity to say or express what they might.

Effective communication ultimately depends on one person recognising and responding to the intentions, codes, styles and needs of another. This degree of sensitivity can only be achieved by learning something of the perspective of another. We generally accept these arguments in the arenas of gender, race and geographic differences. The argument is essentially the same when considering the rights and needs of people with an intellectual disability.

From the literature on questioning that has been surveyed and the comments of professionals within the fields of law, psychology, health, education and policing, it is possible to identify some aspects of 'best practice' which can be effectively juxtaposed beside the perceptions of police

officers and people with an intellectual disability. These in turn have to be juxtaposed with a comparable summary of existing directives and guidelines about 'appropriate procedure'.

Asking questions and getting answers

Interviewing and question asking is a restrictive discourse irrespective of the questions asked. The extent of the restriction was reiterated by advocates working with people with intellectual disabilities. Pursuing a formulaic path of questioning can have exceptionally unfortunate consequence for the suspect.

In one situation there was a young fellow and as the detective said:
"I thought he was a bit dumb, but he didn't seem too bad".
I said, "Did you read his statement back to him ?"
And he said, "Oh, he read it"
And I said, "Out loud ?"
And he said, "Yes"
And I said, "Where were you ?"
And he said, "Oh I was out of the room and I could hear him".
Two detectives interviewed him and the confession was signed and sealed by the time I got there. He would have been in prison. It was an indictable offence.
He said, "I don't know why I did it".
But there was no doubt that he had done it. But he didn't understand that it was wrong and that you just don't do those things.

We need to make a distinction between the process of asking questions and the getting of answers. The first of these can be an inflexible and inexorable process which may or may not reflect accurately what happened, when, why and to whom. If however the focus is shifted from asking questions to getting answers, the array of techniques available grows exponentially with the intelligent effort put in.

Within every question are the cues and clues to the range of answers which we can offer to any question. The type of questions asked actually determine in some ways the kinds of responses that individuals can make. The concept of cultural common ground in questioning is a useful one to consider here. Allied with the notion of cultural common ground are the ideas of personal common ground and accumulating common ground. (Clark and Schober, 1992: 18)

Everybody is the same in that we all need to be addressed and heard in a language over which we have some control. We are all different in that what constitutes that language will vary with individuals. For this reason we must look beyond the words to facilitate improved communication. Simplicity of language alone will not achieve this. What is needed linguistically is an acknowledgment that the context of questioning and the relationships between the people involved are as powerful a determiner of the quality of the responses as the nature of the questions themselves. If

we accept this premise then we must face the difficult challenge of adopting a much more interactive model of question asking. This requires the questioners to take on a lot more individual responsibility for the acquisition of accurate information. Police are therefore being asked to change their role in the questioning arena in more than simple linguistic terms.

Language is the invention of humanity for being in touch with itself. It is also humanity's most powerful tool of manipulation and exclusion. Language has the capacity to construct, deconstruct and reconstruct our world. Some aspects of language serve to bolster the status and position of one to the detriment of another. Sometimes a shared code does not exist between parties and the opportunity to capture and present essential meanings through language is lost.

If the person being questioned does not understand and indicates that this is the case there is very little that the interviewer can do but rephrase the question. Because of the format of the communication the interviewer cannot elaborate or provide a context. People check for understanding a great deal in everyday conversations. The question and answer format mitigates against such checking.

Questioning simplicity

The notion of simplicity of questioning was raised by both police and people with an intellectual disability as a possible solution to some of the problems associated with questioning. If the questions could be made simpler and shorter it was felt that they would be likely to produce more accurate answers. This solution is attractive but inappropriate. There is a great deal of discussion about what simplicity actually means. What some people respond to as simple is in fact not simple.

Simplifying language is in fact changing language, its intent, its subtlety and its meaning. Rather than viewing the difficulty in answering questions in terms of a mechanical solution such as making things short or apparently easy, it may be better to consider how to match the communicative abilities of the person more appropriately with the demands of the questioning format and the context. It may be more productive to expand our view of what an interview is, why are we asking questions in the way that we are, and how can we modify our style to maximise the information collected.

The cognitive interview

The cognitive interview is a method of asking questions which is used by a number of police services around the world. It is predicated on the assumption that people retrieve items from memory in a number of different ways and that this retrieval can be sparked by a variety of cues. The questions asked during interview should acknowledge that context of

memory and explore the context to extract the facts.

> The cognitive interview with its memory retrieval techniques was very successful in generating information from mentally retarded adults' memories. This finding is consistent with those of earlier researchers who found that mentally retarded individuals have an accessibility deficit over and above an availability deficit when information is retrieved from long term store.
>
> (Glidden and Mar, 1990: 14)

The consensus arrived at by researchers on questioning people with an intellectual disability, seems to be that open ended questions produce more realistic, truthful and sustainable answers (Sigelman, 1980). The interviews themselves should be as natural and nonthreatening as possible (Taylor and Bogdan, 1981), with very little focus on formality (Wyngaartden, 1981). The favoured environment is the person's house. Questions should be cross checked, and interviews should start with easy questions and work on from this starting point. These findings are a long way from the concepts about questioning which characterise the formal procedures advocated by police officers.

Issue 4

Recognition

"Mostly when you go to converse, that's when you find the biggest trigger that says that there is a problem." (NSW Police officer)

It was clear from all the interviews with police officers that the debate about communicating with people with an intellectual disability could only begin if police acknowledged and could then subsequently recognise a person with an intellectual disability. The criteria which police used in this process of recognition and the problems they encountered, varied widely.

The statistics about the number of people in N.S.W. prisons with an identifiable intellectual disability are quite horrifying. But how do we translate this statistical information into knowledge that can be used by police officers at the point of initial contact? Statistical awareness alone is no guarantee of more effective procedures. Recognition of the dimensions of the problem and the criteria presently used by police officers to identify people with an intellectual disability, along with their accuracy as perceived by people consulted by the Law Reform Commission, come together in this section of the report in an attempt to provide possible solutions to this formidable problem.

Physical disability and intellectual disability

Recognition that a person had an intellectual disability posed a range of problems for police officers. They were unclear about the distinction between a physical disability and an intellectual disability. A number of police officers thought that speech problems were an indicator of intellectual disability and would rely on interrupted or difficult speech patterns to alert them to this:

You don't mean physical....just intellectual. I don't know very much. I suppose it (recognition) would come when speaking to them. They could possibly have a speech impediment or a lot of them could but I don't know whether they are actually intellectually disabled.

The community as a whole has a great deal of difficulty articulating its criteria for recognising a person who has an intellectual disability. Because the notion of 'normality' is such an amorphous one, people frequently revert to listing specific and easily recognisable features. According to Ashman and Elkins (1990: 63):

> When we ask people to tell us what intellectual disability means, they typically describe a person who has unusual physical appearances, as in Down Syndrome, or serious intellectual impairment resulting from brain damage. Yet such descriptions do not reflect the overwhelming majority of people with an intellectual disability who have no obvious constitutional problems known to result from genetic or traumatic causes.

Communication difficulties and intellectual disability

The issue of communication was more confidently pursued by other police officers who maintained that recognition of people with an intellectual disability was contingent upon a sensitivity to differences in the capacity to respond to, and engage in, conversation. They recognised that intellectual disability and physical disability were not synonymous, and therefore accepted that they needed to search for a more satisfactory and sensitive way of approaching the problem of identification.

I suppose you can't always tell. That's the problem and there are obviously people with obvious facial and physical characteristics, and you would say then that they are intellectually disabled. But with quite a lot of people you can't tell physically so until you actually communicate with them in some way, you would obviously not know this.

'Communication' was a term frequently used but infrequently defined by police officers. It was a bit like a commodity that was either available or not. If communication was difficult or impossible police officers felt that the reason could be attributed to intellectual disability, but it might equally be explained in terms of alcohol abuse or drug taking:

Basically communication. You can't communicate all that well with them. Some-times they are a bit vague with their answers and then again sometimes you don't know if they are intoxicated. With Down Syndrome it is pretty easy to recognise the physical attributes of it. But in general it is just the communication. But then again if they are intellectually disabled or intoxicated it's the same thing, and the same approach to get the information that you need. It's the same difficulty in communicating with them. I mean motor skills are gone.

The criteria of appearance, physical features and overt communication difficulties which were used to recognise people with an intellectual disability reflected a sympathetic set of attitudes. However these particular criteria also meant that police only ascribed this 'problem' to people who presented as a victim or a witness:

I've had a couple of experiences with people with an intellectual disability. But really these sort of people don't come to our attention for the criminal type of thing very often. Most of our experiences are when they don't come home on the bus, or they go missing somewhere. I know a couple of them who were causing trouble in whatever you call them - 'live out houses', and after about the tenth time of the police turning up we had to make a decision to do something. And the end result was that they stayed in the B Remand Centre until someone could actually do something about the situation.

Some police officers felt that people with an intellectual disability had an interest in preserving their anonymity. They did not want the police to know about their disability. They preferred to disguise the disability wherever and whenever possible and actively discouraged recognition.

The consequences were regarded by police as being possibly serious for the individual involved:

I suppose for some others they might try and hide the fact that they are disabled in this way. Particularly I suppose if they were picked up for some sort of offence and you were going through things that they might not understand. They might just say 'yes' or 'no'. But I've never come across one so I don't know.

Vulnerability and intellectual disability

The vulnerability of people with an intellectual disability to crimes of all kinds was mentioned by a number of police officers. Again this was dependent upon their recognition of the disability. Victims with an intellectual disability were clearly identifiable by police because of their demeanour, their appearance, their speech or their living arrangements. Their disability was observable and clear:

Like as far as harrassment and malicious damage is concerned, like they used to have a few things thrown at them at their house, which is pretty terrible.

I've not had that much contact with people with an intellectual disability. I have on a couple of occasions. I remember we were dealing with a fellow who bought this car off this other fellow and he left it with him and asked him to fix up these various things wrong with it. Anyway the fellow fixed up the car and then he went ahead and sold it to someone else. Now the big problem that we had was not so much getting this information off this handicapped fellow, but being able to assess him as being able to present the evidence in court. And that was something that got up my nose. I didn't like the idea of getting all this information off this fellow and not being able to do anyhthing with it. It is a very unfair sort of thing. They have the same right to protection under the law as anyone - more so probably. It was merely the reason that he wouldn't make a good witness.

A number of participants in the Law Reform Commission consultations comment-ed on their vulnerability and exploitation:

People with a disability can't stand up for themselves so they are easy targets. People take them for granted.

A city police officer echoed these sentiments :

Like they are at a bit of a disadvantage. Like they go to the bank teller and get robbed. You know these people see them and see that they are handicapped. They're quite easy prey. It happens a fair bit around here. A lot of it doesn't get reported. Because they're too scared to. They're at risk because they like to do things on their own. They like to try and be independent. The ones that I know get a lunch break from the workshop at the same time every day. And they go to bank at the same time every

fortnight and you're forever telling them to change their patterns cause people get to know them. Actually I try to be near there when it happens.

Particpants in the consultations reported a range of crimes:

... they had been victims of crimes themselves, of both minor and more serious offences. Several particpants (both males and females) had been victims of sexual or other assaults of varying degrees of severity.

Police recognised intellectual disability much more readily in victims or witnesses and the disability was generally observable. Those people whose intellectual disability was not easily or quickly recognised presumably passed through the system unaided.

Police officers also commented that they came across only a small number of offenders with intellectual disabilities. This incidence of people with intellectual disabilities as ascribed by officers probably says more about police attitudes towards these three groupings (victims, witnesses, or offenders) than anything else. Perhaps in the case of an offender the recognition of an intellectual disability is simply not an issue. The dilemma of police officers in recognising and dealing with people with intellectual disabilities is encapsulated in the following comments from an experienced officer:

I don't know how to recognise it. But if there are certain guidelines, certain hints about how to recognise people with an intellectual disability then maybe we should know about them, instead of us just saying: "Oh well, he's just stupid." Maybe if we were a bit more aware of what things to look out for - even an idea of how many people in the community are likely to have intellectual disability - what kinds there are. That would mean that a certain percentage of both victims and offenders have intellectual disability. I don't think all police know how to deal with them. Not a lot of police have even the patience to sit them down and even try to communicate.

In a discussion paper for the Sydney City Mission, Raymond Hudd speculated about the extent of the problem of the unidentified or unrecognised. His concerns arose directly from the observation of the predominance of 'borderline' and 'mildly' disabled people who are ex-prisoners calling on the services of the Mission, especially hostels and refuges. He suggests that this group, which he refers to as the 'forgotten group', consitutes possibly 40%-50% of the prison population. He strongly suggests that this group needs to be identified in order to generate an appropriate response. Further, he notes that the World Health Organisation definitions and descriptors don't include a category which would include this (vulnerable) target group. Nor do they provide any system of measurement or assessment which is sensitive enough to distinguish between this group and 'normal'. (Hudd, 1992)

Guidelines for recognition

The issue of the recognition of people with an intellectual disability is a perplexed one. The balance between the checklist mentality and a genuine sense of inutitive knowledge about intellectual disability seems hard to agree on. Similarly the ethical dilemma created by asking that people with an intellectual disability be responsible for reporting this disability to police is a difficult one to resolve. The balance between individual human rights and the need for police to know more about the people with whom they have contact should be the subject of much more extensive debate. The problem of recognition is therefore a multi-dimensional one.

In a sub section entitled 'Communication difficulties' within the paper presented by Ron Cahill (Chief Magistrate, A.C.T.), there is a list of characteristics of people with an intellectual disability. It alerts us to some of the possible problems which confront a person with an intellectual disability trying to communicate effectively:

> A person with an intellectual disability may have difficulty in giving reliable instructions because of their communication difficulties such as:
> - a restricted vocabulary
> - a short attention span
> - difficulty in understanding questions
> - responding to questions either inappropriately or with inconsistent answers
> - memory difficulties
> - difficulty with abstract thinking and reasoning
> - responding to questions in a manner thought to be wanted by the interviewer.
>
> (Cahill, 1993: 6

> ... even when the general intellectual status and handicap of an individual is detected correctly, the judgements of those subjects' abilities in the practical task of answering questions does not follow this detection. This has important implications, for it does not support the view that if only the mentally handicapped can be identified, then they will be dealt with and judged appropriately.
>
> (Tully and Cahill, 1984: 2-3

> ... a person with an intellectual disability is someone who will be likely to have difficulty with reading, writing, comprehension and money skills. He or she will have difficulty with community survival skills and in social situations. The disabled individual is likely to be unaware of many of the subtle and sometimes even gross cues that guide our everyday behaviour and keep us out of situations in which we may be the victim of crime. Furthermore when a crime has been committed an intellectually disabled person will have less knowledge of the range of actions available to him or her.
>
> (Wilson, 1990: 2

Recognition can be based on a range of quantifiable results from the administration of a number of tests. IQ testing until recently has been the mainstay of the battery of tests applied. However unless these are applied to everyone there is a likelihood that the most borderline and vulnerable group of people with an intellectual disability will proceed through the criminal justice system undetected and unsupported. However philosophically the answer to the conundrum ought not to be found in the introduction of broad banded testing but rather in the sensitive attuning of police officers to the more functional indicators of intellectual disability.

Recognition and fair communicative treatment

Recognition of a person with an intellectual disability hinges as much on the will of the officer to do so as it does on the existence of distinguishing characteristics. If police perceptions do not include an acknowledgment of the possible effects of intellectual disability on communication and behaviour, then there will be no reason to even engage in the activtity of recognising these people.

> ... policing is highly differentiated. The organisational and legal structures orient police to some groups and contexts and not others. But, in addition to this, police working categories themselves ensure that policing is carried out differentially with regard to the public. Whilst it is obvious that policing weighs disproportionately on some groups, it is also important to recognise that police working categories can operate, not only to ensure that some groups are possibly over policed, but also that others are under protected.
>
> (Hogg and Findlay, 1988: 50)

The general observation must be that police officers do not generally recognise the vulnerable group with intellectual disabilities. When they do acknolwedge their existence they are frequently confused with the mentally ill.

The problem appears to be that the descriptors for intellectual disability are lodged within the individual. The problem is the responsibility of the individuals and lives within them. It is defined in these terms. Such prescriptions do not allow for definitions of intellectual disability which are interactive or transactional or functional - that is, definitions which hinge on what happens between people when they come in contact with each other, and attempt to communicate.

Recognition and stereotypes

The attraction of stereotypes for police officers is understandable. The constantly changing work environment, the huge array of people with whom they have contact in any one day, and the inherent danger associated with policing make the cocoons of stereotypes one possible source of stability in an otherwise unfriendly and unpredictable world.

> The core of the police role, that of emergency order maintenance, involves police in responding to a diverse range of calls for assistance and intervention to settle conflicts outside, as well as within, the criminal law. Above all else, this means that police confront an unpredictable working environment. The principal, and distinctive resource with which they do so is the capacity to employ legitimate force. These features of policing, it has often been noted, engender a habitual suspiciousness of the unconventional and a need to stereotype, as a means of effecting some control over the unpredictable and potentially dangerous elements of the job, that is, a need to develop working categories and images relating to the contexts and objects of the policing with which to anticipate 'trouble' and guide the exercise of discretion.
>
> (Hogg and Findlay, 1988:49)

This viewpoint is developed in the *Policing Issues and Practice Journal* by Pauline O'Callaghan.:

> Inherent within our function of detecting and apprehending offenders, are beliefs and attitudes which presuppose a persons behaviour. The very nature of policing requires that police develop a sense of character assessment, we use our common sense to infer certain attributes about people, for example, to be able to identify possible suspects or know when people are lying through their teeth. However, in ways we are often unaware of, our explanations and social judgements are vulnerable to error.Many misconceptions arise out of these stereotypical attitudes and are reinforced through acceptance of the social norms of the particular group to which we belong ... Without doubt, one of the most powerful and persuasive forces which shape police attitudes and behaviours is the influence of the police culture to which we belong.
>
> (O'Callaghan, 1993: 28)

An interactive view of recognition

If we accept a more interactive set of criteria for the recognition of intellectual disability then we must also accept more responsibility for effective communication.

> In addition to these clinical defintions, to get a true picture of the intellectually disabled, it is necessary to view the results of any psychometric testing in conjunction with social adaptiveness and their ability to integrate into society. As an example the Australian Aboriginals usually score low in psychometric testing, but perform above their indicated potential in their natural envionment with their people.
>
> (Hudd, 1992: 9)

This view quite specifically encapsulates a universal truth that people perform better in every respect when they have control over the processes in which that performance is assessed. It also suggests that a 'cultural' appreciation of the needs of people with an intellectual disability is an appropriate organiser for our thoughts about the issue of recognising a person with an intellectual disability.

An interactive definition includes all participants in a communicative event and it is impossible for those with the superior communicative abilities to discount or disregard the efforts of the other parties involved.

> Rather than equal treatment, the goal may more properly and radically consist of instituting new forms of differentiation in policing, forms of differentiation which would benefit in various ways, some of the groups who are currently disadvanatged in their contacts with the police.
>
> (Hogg and Findlay, 1988: 53)

What is needed is an interactive and individualised instrument which can be administered anywhere, anytime by anybody and which will alert us to the communicative ability of the person in that particular context at that particular time. The A.C.E. procedure presented in Chapter Five of this report and expanded upon in the accompanying training materials may provide the required direction.

Issue 5

Communication

'What's the good of talking if you're the only one who understands what you're saying" (Citizen advocate).

> ... good intentions are not enough ... what is needed is sophistication in phrasing ... structuring questions ... skill in interacting with people. There is much to be gained if we try as hard as they do to make the communication process work.
> (Sigelman, 1993: ii)

Spoken and recorded words are the currency of the law, and police are constrained to collect and respond to these words. Protocols for questioning, the caution, and the preparation of cases, all hinge on the validity of the words spoken by the victim, the witness or the offender. Justice is most readily available to those who are articulate, confident and in control of the linguistic environment in which they find themselves.

All the discussion of the preceding issues has therefore been an introduction to the central concern with communication. Conceptions about recognising people with an intellectual disability, their special needs and their behaviour all influence the way in which police communicate and respond. Communication, both effective and ineffective, is also generally conceived of only in terms of verbal behaviour. Anything other than verbal performance is seldom admitted.

Catering for difference

Some police officers realised the need to communicate differently with people who they perceived to have an intellectual disability. Some suggested that speaking more slowly was a worthwhile track to go down.

I just try and communicate as best I can. Or sometimes there is a friend or someone nearby that you can talk to. - someone that half interprets for you - tries to get the message across. Sometimes it is not that bad - you can communicate. It depends on how severe the disability is. A couple I've had - it wasn't a great problem but it was a bit slower. Communication was a bit slower, but everything was still achieved.

Speed of speaking

In the section of the consultation conducted by the Law Reform Commission which refers to police helping witnesses, the informants suggested some practical changes for police to help them communicate more effectively. Their comments included:

Such as talking to you - not fast;
Listen to what (people with an intellectual disability) have to say. Give them time. They (police) need to know that you are disabled and can't talk too fast;
... to not talk too fast;

Speed of language delivery was aligned in the minds of some police officers with the need to deconstruct their speech and break it into smaller and more manageable pieces. This was supposed to ensure that the person with the intellectual disability understood what was being said to them:

I'd be a bit slower and I would try and speak in terms that they would try and understand, and after each question I would say: "Do you understand what that means? Can you tell me in your words what I am asking you?" But that depends on whether they can understand that. Maybe they wouldn't even understand that and they might just say "Yes" to everything and have no idea what I was saying.

Vocabulary and communication

People during the Law Reform consultations also felt that:

Law people ... don't use big words.

They felt that a change in vocabulary and terminology could help them to understand the processes which were going on around them

Styles of communication

Some police officers approached the issue of communication from a human rather than a linguistic perspective. They frequently described the need for patience and skill in communicating with people with an intellectual disability. If police were patient and acknowledged the special needs of people with an intellectual disability then certain communicative patterns would emerge.

I think that possibly they need a little bit more understanding, a bit more patience. If they can't get out what they are trying to say....a little bit of help maybe trying to express themselves. And the police probably have to be a bit more understanding and just recognise that it's a problem that they have got and they're not doing it to be difficult.

A person with an intellectual disability maintained that patience could be expressed practically and simply by having:

... someone to sit down and hear what happened - someone to talk to.

The perceived childlike behaviour of people with an intellectual disability was given as the explanation for the communication style used by some

police. As with children patience, time and language unloaded of its jargon were seen to be appropriate and effective:

Patience ... I suppose it would depend on how severe the case was. But just a bit of understanding I think. If you are prepared to be patient and try and explain and get really down to the basics. There's a lot of jargon that we use that most people do understand so that there is no confusion legally. But with little children for instance I say what I have to say and then I always break it down for them, sort of reinforce the message. Things like the caution are very difficult.

This intuition was supported by the Law Reform Commission consultations.

Communication and the place of the advocate

In an attempt to solve communication problems a number of police officers suggested that a friend, advocate, or interpreter should be contacted to assist. They could provide security and guidance about how the person could be encouraged to communicate most readily and easily.

I would always get somebody in that they feel comfortable with because I know a friend of mine had a stutter and she was alright if she had someone there who understood her problems. Perhaps if you could get somebody that they trust. They sort of shut off a little bit otherwise.

The communicative environment

A communicative environment was acknowledged by some police officers as being a critical prerequisite before any formal communications between police and a person with an intellectual disability could effectively proceed. Such an environment would include provisions for seating coupled with relaxing conversation, posture, and suitable body language:

Again it varies according to the individual ... everybody is different and their problem could be different. They might have trouble reading so you might need to read it to them. You make sure that they can read - you get them t read something to you out loud - which you would normally do anyway because there are a lot of people who can't read. You need to talk that bit slower - get them to be comfortable. Sit them down in a comfortable room - sit down with them, don't stand over them. - just sit down and give them a drink, get them relaxed. Just get them so they can communicate freely to you, so that they are not tensed up and freaking out while you are trying to ask them questions. Just get the whole atmosphere changed so it is not 'us' and 'you'. Just let's talk about what happened.

Levels of communication

Police frequently used the metaphor of 'levels' to explain the mismatch between the complexities of their language and the abilities of those people to whom they were talking. People's communicative abilities were located at different positions across these levels and some of the police felt the need to allocate people to such 'levels' and then adjust their thinking and speaking accordingly. There were various methods used to reach these judgements. Some felt:

It's just like speaking to kids at school. You need to come down a level.

For others the responses of the people being interviewed determined the particular level they were assigned to:

I suppose I base my assumptions on their level of responding to the questions I ask and their general demeanour. I try to find their level of intellect really compared to their age. First of all I had to try and establish his level. You try to feel him out first and then work down or work up. It's very hard to go straight into their level where you think that they might be understanding what you're saying and where you're coming from. But once you work out that level I think you can try and communicate as best as possible. I went pretty well. We actually had to interview this person on tape and I think we've still got the video of it. The actual offence didn't go anywhere because there was counselling involved.

Communication was frequently regarded and described as layered. Police thought that there were levels at which communication took place and the challenge for them was to match themselves against the levels of the people that they were dealing with:

Getting to their level, finding their level and if need be getting someone in with them who they trust, which you should do anyway, like a relative or a friend ... someone they feel comfortable with and maybe using them. Like they would know this person a lot better than I would and that would make my job 100% easier. If I could have someone there who could know their level, know how to communicate and understand them a lot better and sometimes I could maybe go through the third person to get my point across. It would be like sometimes using an interpreter if you have a foreign person that you are interviewing. I would find that an assistance, and if you came across a sticky point where you simply couldn't get a point across, you could go to the third person and use them as a mediator.

The implicit theory here is that if you know someone, your chances for effective communication are increased in proportion to the empathy which occurs between you.

The notion of levels also implies a mathematical formula for understanding communication. If we just provide the correct formula and mix it up with greater or lesser strength we will be successful in communicating. Formulaic references and easy answers appear as solutions almost independent of the needs of the individual.

The 'levels' notion, in turn, gives rise to ideas and expressions about stages of development. It seems from their comments that the proponents think that if they can accurately plot the individual's level of language development they will be able to match their communication to this stage. Such an exercise appears to be extremely taxing and not particularly helpful. It is probably more useful to focus on the "... communication skills of the mentally retarded ... their ability to understand questions and use speech to accurately convey facts and opinions" (Sigelman, 1983: 11). This functional view of communicative abilities will be of more value to police officers than a sophisticated analysis of the developmental capacities of the person being interviewed.

Effective communication and the person with an intellectual disability

Gai Hyson's study of contact between people with an intellectual disability and the police revealed that the people involved as victims, witnesses or offenders had grave reservations about the effectiveness of the communication involved. "I didn't understand what was happening"; "They wouldn't listen to me"; "They used big words that I didn't understand". Both the communicative environment and the content of the interactions were the subject of further investigation and analysis (Hyson, 1988: 14).

> Some of the things that I found were frightening. The fact that 78% of those surveyed signed a police document in a police station without understanding what it contained. You are only relying on the police integrity, or their acknowledgment or perception of the problems of people with an intellectual disability that it was fair and above board. And that really frightened me knowing of course the statistics of the very high rate of people imprisoned who have an intellectual disability. I thought that they could quite easily be hoodwinked into signing things that they didn't even understand.
>
> In the questionnaire, for those who hadn't actually been arrested, 77% said that they would sign anything that the police asked them to. And for those who had actually been arrested, 73% said that they signed something that they didn't understand. I guess there is an issue of power there and people with an intellectual disability often want to please so they won't really get into trouble if they are intimidated. They'll sign it.
>
> People who responded found it difficult to talk to the police. I guess they were intimidated. They didn't know what questions to ask because they were frightened and intimidated and 73% said that the police couldn't understand what they were saying. And I can understand the police frustration and again that highlighted the need to have someone there with them so that they could make sure that things were explained to them.
>
> The Law Reform Commission findings are correlating with the results I found in this region. It seems to be across the board. Police need to be educated.
>
> (Hyson, 1994)

Communication and training

The crucial importance of training emerges clearly from all the discussions. Police need assistance in recognising and then communicating with people with an intellectual disability. Police need to know that there are a variety of ways of legitimately communicating with people with an intellectual disability which will retain the integrity of the interview process whilst not excluding those individuals whose communicative abilities are not well matched with the demands of formal police procedures.

> "The same process which trains police to deal with intellectually disabled suspects will enable them to provide better assistance to the intellectually disabled victims of crime. A reliable statement from the victim, for use in a prosecution, is as important as a reliable confession. There is no law which renders inadmissible a witness' testimony on the sole ground that the witness is intellectually disabled. Unless the witness' evidence can be shown, by reason of mental infirmity, to be wholly unreliable, the jury would be entitled to hear it and assign to it such weight as seems appropriate, in the light of a warning by the trial judge to treat it with some caution. As with confessions, great care should be taken so that a statement truly represents what the witness is able to say about an incident in his or her own words. The degree of sophistication of the account should reflect that of the witness and not the officer taking the statement. In particular it is vital that the statement be recorded as accurately as possible using the victims' own words and grammar, because sometimes important evidence and meaning can be lost when it is 'translated' into the sense which a police officer thinks it means. Intellectually disabled people may have particular words, for example, for sexual organs, which can be understood by care givers, but which may be meaningless to a stranger.
>
> (Hayes and Craddock, 1992: 77)

Solving communication problems is therefore a much more complex issue than merely changing structures or words. Such comments reflect the fact that something is definitely wrong and needs improving. "How?" and "When?" and "Why?" are the questions about communication which we need to answer when discussing the interactions between police and people with an intellectual disability.

Towards a different view of communication

By reconstituting the definition of communication it is imperative to deal with police perceptions as they exist now and help them to understand new and different ideas about the communicative environment in which they find themselves. It is also possible to develop a taxonomy of good communication principles which apply in all situations.

Familiarity and good communication

Firstly, familiarity generally helps the process of effective communication. The better we know someone, the easier it is to speak with them and enjoy some sense of mutual understanding. Long time friends often comment that they take up conversations where they left off maybe months before. The corollary is also true. The less the contact and the less shared experiences and history, the more difficult is the process of communicating. In the context of police communicating with people with an intellectual

disability, lack of social contact breeds fear and confusion in the minds of both parties.

> We found that lawyers and police were unused to working with people with intellectual disabilities. Many considered it difficult to carry out interviews or even talk to this group of citizens. They asked questions and provided information in language that was incomprehensible to victims, or asked questions which were conceptually difficult for people with intellectual disabilities. They also found it difficult to hear what people were saying or to give it credibility.
>
> (Johnson, 1988: 138)

Would they have used incomprehensible and conceptually difficult language if they understood the difficulties being experienced by the other partner in the communicative equation? One would have to assume that if they understood the problems, they would have adjusted their language in sympathy with their linguistic needs. "Less abstractions ... less reference to number ... more careful questioning" (Johnson, 1988: 138) will certainly clarify the conversation considerably but what is required to facilitate effective communication is a commitment to the process of finding out what the victim, witness or offender has to offer.

> Compared with the wide acceptance of this fact in biology, the behavioural sciences seem still to base themselves to a large extent on a monadic view of the individual and on the time honoured method of isolating variables. This becomes particularly obvious when the object of the study is disturbed behaviour. If a person exhibiting disturbed behaviour (psychopathology) is studied in isolation, then the inquiry must be concerned with the nature of the condition and, in a wider sense, with the nature of the human mind. If the limits of the inquiry are extended to include the effects of this behaviour on others, their reactions to it, and the context in which all of this takes place, the focus shifts from the artificially isolated monad to the relationship between the parts of a wider system. The observer of human behaviour then turns from an inferential study of the mind to the study of the observable manifestations of a relationship. The vehicle of these manifestations is communication.
>
> (Wazlawick et al. 1967: 21)

Better tools of communication

Clearly then changing words and phrases will not facilitate better communication of the kind that is required. Improvements in the tools of communication will help marginally as will a sensitivity to the needs of the person involved. However what is most necessary is a different way of viewing the process. It is not a linear process but a recursive one, with each partner influencing and being influenced by a myriad of communicative variables. It is perhaps the most complex of human relationships and cannot be reduced by neat formulae to easy chunks.

Most of us intuitively recognise this complexity although it is difficult to describe and articulate. In the face of such complexity we often revert to isolating manageable sections of communication such as the words themselves or the structure of the sentences. In this way we hope to make our communication more accessible and user friendly. However we are in danger of reducing communication to an unjustifiably simple activity when, in fact, the converse is true.

If communication is just about the particular configurations of words and phrases we could specify with relative ease those constructions which guarantee effective communication and those which do not. We often resort to descriptions when attempting to analyse how we communicate. Both police and people with an intellectual disability focussed on characteristics such as simpler language, shorter words and less complex sentence structures as the way to achieving better communication. Certainly these factors have an effect on how well people communicate with one another. But better communication cannot be guaranteed simply by changing the surface features of language. Communication is an interactive process and as such is dependent on the intentions, capacities and sensitivities of the parties involved and the environment in which the communication takes place.

The N.S.W. Department of Community Services document on procedures for interviewing (in use in 1993) offers some helpful guidelines for interview and lists some of the factors influencing the effectiveness of an interview with a person with an intellectual disability:

- The person should be asked to repeat back in their own words what was said to them to ensure that they have understood
- People with an intellectual disability may have a shorter attention span and may need regular and frequent breaks
- Extra time may need to be spent on getting to know a person with an intellectual disability in order to ensure that the person feels at ease and comfortable in talking
- Questions should be kept simple and concrete. Abstract concepts should not be used.
- There may be a need to be especially sensitive to issues of self blame or guilt, especially when introducing the topic of the police. If available and the client wishes, it may be useful to include the police in the interview when discussing whether to report the assault or not.
- It is very important to check out what supports the person has, especially the safety of the place the person is returning to.
- It is preferable to do as much of the interview jointly with the doctor as is possible to prevent the client having to repeat the story.
- To facilitate the communication process in the interview situation, other information such as picture cards, anatomically correct dolls etc. may be used.

(N.S.W. DOCS, 1993: 5)

The consequences of poor communication

The reinforcement of poor and intimidating patterns of communication between the police and the person with the intellectual disability compromises the ability of the criminal justice system to deal fairly and even handedly with this individual.

This point was stressed by the commentators involved in the Law Reform Commission consultations when they observed there was an obvious need:

> ... for appropriate questioning, with police being more sensitive to the additional difficulties faced by a witness with an intellectual disability, both at the police station and in the courtroom. It was stressed that police should take care with language, not talking too fast or using inappropriate or suggestive language and take time to question people. It was suggested that people with a disability should

> have their legal rights clearly explained to them, with police officers carefully checking that they understand these rights if they are charged.
>
> (LRC, 1993: 60)

Some salutory lessons in communication

The Law Reform Commission consultations were impeccably planned and sensitively carried out. Embedded within this report are some lessons to be learnt about communicating with people with an intellectual disability.

> Despite the generally high level of communication skills and the carefully structured discussions, there were still some areas of misunderstanding and confusion. The potential for increased misunderstanding and confusion in a less controlled and friendly environment, such as a police station or a court room was apparent.
>
> (LRC, 19923: 64)

This report establishes some sound principles for communication and these appear below. All the guideposts are the result of careful and reflective observations of the ways in which people with an intellectual disability communicate and the possible impediments which can short circuit the process. All the guideposts are pointing to a sensitivity towards the communicative needs of the person with an intellectual disability and the responsibility of the other communicative partners to recognise these and thoughtfully adjust their communicative styles.

The following comments outline some of the possible problems that people with an intellectual disability may experience when communicating. These comments are taken from the summary and conclusions chapter of Research Report Number 3.

> In order to maximise understanding, the strategy for discussion consisted of simple stories put into clear context, containing information and events relevant to the lives of the participants ... Even in these circumstances, there were significant misunderstandings, non responsive answers and incorrect usage of words that had been explained to the groups.
>
> With the majority of participants it was clear that understanding increased over the two hour period, and that taking time to explain and repeat concepts in comprehensible ways was worthwhile.
>
> For some of the participants, periods of apparent understanding were interspersed with periods of concentration lapses.
>
> A number of the participants were easily able to recount their experiences in great detail but had difficulty in recalling certain details such as names or the order of events ... When involved in the criminal justice process, whether as suspect, victim or witness, it is often this kind of detail that becomes important.
>
> There was a considerable number of non responsive answers to questions ... some participants took everything literally ... similarly some participants would seize upon one word in a question or comment and relate a story that was unrelated to the issue under discussion".
>
> Even where some concepts were clearly explained, there were still times when information or concepts were confused by some participants.

> The tendency of people with an intellectual disability to answer "Yes" to questions asked by a person in authority or to give the answer they believe is expected has often been commented on and has obvious dangers within the criminal justice system, particularly in the context of police investigations.
>
> ... the apparent understanding of a person with an intellectual disability must always be carefully checked.
>
> ... the importance of non verbal cues to the person with the intellectual disability.
>
> ... the presentation and attitude of the police, lawyers, judges and other authorities within the criminal justice system may be as important as the language and methods of questioning that they use.

Clearly effective communication begins with a commitment to understanding the needs of others.

Principles of good communication

The principles for promoting communication which is both effective and fair, and which the police service might reasonably be expected to respond to are:

1. Establish the existence of a shared way of speaking and acknowledge that there may be the need for a communicative medium or style beyond the 'ordinary' or the expected.

2. Create a physical and social space within which the participants can focus on each other and the task at hand.

3. Allow for two kinds of time; overall time for the interview and wait time for responses

4. Clarify the purpose and intent of the occasion.

5. Validate responses by:
   a) testing for acquiesence
   b) seeking alternative expressions from different perspectives

6. Acknowledge the possible value of:
   a) a third party
   b) an augmentive system of some kind
   c) a skilled colleague familiar with the challenges of communicating with a person with an intellectual disability

Issue 6

Responsive policing

The issue of responsive and preventative policing was raised by a number of police officers who felt that communicating with people with intellectual disabilities could be improved by creating more regular opportunities for informal and non-punitive interactions. For those police who had undertaken these activities the benefits were obvious and professionally helpful.

Contact with other agencies

A number of police officers had also made contact with other agencies which had professional and social relationships with people with intellectual disabilities. However the confusion in people's minds about the distinction between mental illness and intellectual disability was clearl displayed in the articulation of these solutions. Police generally used 'mental illness' and 'intellectual disability' as interchangeable terms to describe what they considered to be one community. As a consequence the blanket solution did not always match the group of people for whom it was intended:

Yeah, we've got a few around town here. We're fortunate. We've got a good relationship with the mental health team to cover the worst ones and we see them every six weeks when they do their rounds. And if they've got problems with anyone they let us know and we keep an eye on it and contact them back. If they've got a problem with one of them when they come out, they call us in and we'll go with them and assist any way we can. It's just something that we've developed over the past couple of years. I think we got called to a particular job a couple of years back and the mental health team were involved and we just grew from there. So now it's just a matter that they just come out, especially if we are working and they'll call in and we'll have coffee and we'll talk about the ones that we're concerned about and who we think is off the rails, and they'll tell us about the ones they've seen that day and any problems they perceive.

One particular day there were three that they were worried about that were going off over the weekend, and they went off that night. But fortunately we were able to ring them direct that night. We knew where they were. It was done quickly. No worries.

But in most stations there is no list that you can call. That's a problem and unless a bloke gets off his bottom and does it himself he'll never know. But we find it works. Tremendous.

Meeting together

The value of meeting in other than adversarial circumstances was a sentiment echoed by a participant within the consultations conducted by the Law Reform Commission. The value was seen in terms of police and members of the public learning more about each other:

You should ask the police to come to sessions like this - it's important that they meet people with disabilities and that people tell them about themselves.

During the Law Reform Commission consultations people suggested that:

Someone to talk to them is important.

Orientation experiences about police and the law were considered worthwhile in helping people with an intellectual disability shed some of their fear and feelings of inadequacy in dealing with police:

Maybe see a case happen. Take a walk through the court to see it happen.

An introduction to the world of policing was commented on by another participant who had attended a course which served this purpose. The value of the experience is clear from the following comments:

I did a course with the (suburb) TAFE with people with disabilities. We went to the (suburb) Police Station (as part of the course). They showed us around, explained about reporting things. I was surprised that there were so many police there, I only expected one person. They were friendly, nice guys. They said they were there to help us, don't be scared of police. [There is a need for support for] people with disabilities who are quiet - they may need self advocacy in future because if they don't say something now, they never will - it will be useless, we need to learn as much as we can.

The role of the advocate

In keeping with the ideas that people with an intellectual disability have difficulties in dealing with the police, a number of people suggested the need for an advocate. This was interwoven with the concept of recognition, because as one police officer commented, recognition alone is no solution to the problems which confront the person with intellectual disability when they have contact with the criminal justice system:

The issue is: what do police do when they recognise they are dealing with a person with an intellectual disability? You have to give them a solid recommendation to work on otherwise they have got nowhere and you are just shifting the problem one step back.

The 'solid recommendation' came in the form of an advocate, a contact or an observer who would be present with the person with an intellectual

disability during contact with police officers. All these groups of people were seen to be safeguarding the rights of the individual and assisting police. One police officer suggested that an advocate should:

... make sure that the person is not being dumbfounded by questioning. Make sure that people are respecting their choice. Make sure that they are understanding what is being required of them. During questioning making sure that appropriate questions are asked and explaining the processes. An advocate facilitates communication.

Other officers were less clear about the specific role of the person but knew that such a person could help them:

They just need contacts for us. If we're having problems with them we have to have some way of contacting someone who can help us.

The participants in the Law Reform Commission consultation supported the idea of an advocate or helper in dealing with police. Commenting on the difficulties encountered in reporting a crime and possible ways for circumventing these problems, one participant referred to organisations which offered support and advocacy:

There are two organisations that could help you: Redfern Legal Centre and Self Advocacy - it's a good feeling to have Self Advocacy, it's similar to Redfern, its about involvement with people with disabilities. If the person felt comfortable, they could tell Self Advocacy about the crime and they (Self Advocacy) could ring up on their behalf. Self Advocacy could ring Redfern (Legal Centre) and explain what happened and then the two organisation could speak on behalf of the person who can't speak well. It's good to work with someone who has a disability themselves.

Reporting seemed to be a difficult procedure for the people interviewed and:

Some participants thought they would be able to report the crime on their own: "We are responsible for our own safety." Most participants however thought they would need assistance, from such people as their boss, a grown up, a friend, another witness, a family member, a community legal centre such as Redfern Legal Centre or a support person, service provider, social educator. "There is nothing worse than talking to police and being tongue tied."

Mark Ierace in *Intellectual Disability: a manual for criminal lawyers* strongly recommends using the services and expertise of a citizen advocate, rather than just 'a friend', to avoid the complications and confusions associated with a range of roles a third part might occupy. His advice and warning is aimed specifically at lawyers taking briefs from clients, but both his advice and his warning may also be good for effective and fair police work. (Ierace, 1989)

Advocacy and recognition

If we assume that the will to provide an advocate for the person with an intellectual disability does exist, the police are still placed in an invidiously powerful position because advocacy is contingent upon recongition. If the police do not recognise the person with an intellectual disability, they will not make the move to involve a third person in the interview situation. One informant who has carried out research into the relationships which exists between police and people with an intellectual disability commented that the police

> ... might just think: "Oh he's just a bit dumb you know, or drunk or on drugs" Within the package of training materials you need to describe what it is like for a person with an intellectual disability in that situation and just encourage the police to actively pursue that avenue of allowing them to call someone or get someone in who is used to working with people with intellectual disabilities.
>
> (Hyson, 1994)

Cahill notes that

> In both Victoria and N.S.W. (and possibly elsewhere) there are police instructions which require the police to interview the suspect with an intellectual disability in the presence of a parent, guardian, relative or friend or other responsible person not associated with the inquiry. This is designed to faciliatate communication and probably, protect the rights of the person. In Victoria this requirement exists when a police member believes that a person may be intellectually disabled and extends to the interviewing of witnesses.
>
> (Cahill, 1993: 13)

The role of the advocate in assisting the person with an intellectual disability to navigate their way amongst the complexities of the criminal justice system is dependent upon the police recognising that the disability exists and actively ensuring that the individual's rights are protected in this way.

If a difficulty in communication is recognised then a certain set of procedures should be utilised irrespective of whether there is an assessable 'amount' of 'intellectual disability' present. With such a high proportion of the prison population possibly fitting into the category of intellectually disabled, there seems some sense in recognising this as a 'normal procedure' to meet the range of needs expressed by people in circumstances of police questioning rather than as a 'special procedure' for use at particular times.

The advocate as communication facilitator

The intention behind the admission of an advocate into police questioning is articulated in terms of making sure that the person being interviewed is not dumbfounded by the questioning, that their choices are being respected and that they are understanding what is being required of them. An advocate facilitates communication during questioning by making sure that appropriate questions are asked and by explaining the processes that are taking place.

In considering the evidence of children and other vulnerable witnesses, the Western Australian Law Reform Commission focussed on reforms which took place in Scotland to provide directions which we could pursue in Australia. The Report made systematic and detailed recommendations about the presence of another person to support the witness. These included the following:

> The support person will need to be:
> - sufficiently informed about court proceedings to be aware of a support person's obligations and behave appropriately.
> - sufficiently acquainted with the child to be a familiar element in what may otherwise be a strange environment
> - not personally involved in the proceedings, for example as a witness or as a person with any interest in the outcome.
>
> (W.A. LRC, 1990: 90)

There appears to be a considerable amount of confusion surrounding the principles of advocacy. A citizen advocate maintained that:

Nobody worries about an independent third person. We haven't got that firmly embedded yet. The police seem to feel threatened by that concept.

One consequence of using the skills of an advocate is the possible de-skilling and further de-sensitising of the police force. Over- reliance on a specialist officer within a station or the attraction of calling in an advocate whenever a possible problem occurs does not satisfy the rigorous demands of the evidentiary base of the criminal justice system. As one psychologist maintained:

We have got beyond having just an observer to ensure that rights are safeguarded. The question is, "Who is now going to have the skills to gather evidence which is of sufficient strength to be used in court?" The police can't sub contract a police job.

The demands of society and intellectual disability

The implications of not having a person to assist the victim, witness or alleged offender in communicating with police impacts as much on the person with an intellectual disability as it does on the police. In the absence of help, police are constrained to act according to protocols. Society demands that police do something. As one officer commented:

We would love someone to come along and take responsibility for that person... the last thing we want to do is arrest, charge and refuse bail because that is not really the whole point of it. When people don't give assistance that's when it gets very frustrating - because we are left there and we have to do something.

The dilemma was further developed by other officers and the sense of frustration can be heard clearly in their words:

The copper is the last resort. So when they can't find anyone else they call the poor old coppers no matter what - because we have to do something about it. Because we are in the firing line. If we don't do something about it and that person goes out and becomes a little more naughty, it's my problem for not doing something.

No one wants to take on the responsibility and as coppers we have to do something and the only way you do it is by forcing people's hands. And you take the last resort open to you and that's to arrest and charge and refuse bail. Agencies just pass on the problem.

When no one else wants the problem we get it. But we don't have the mechanisms really to deal with it. That's one of the biggest problems - there's no training. I've been here 20 years and I've received no training in it at all.

Social control and social welfare: the dilemma

The intersection of these perceptions about their role and the communicative needs of people with an intellectual disability was described by one officer who, when speaking about alleged offenders, said:

We don't have to communicate. You have to react to what is there. I'd say we very rarely have to go and talk to or communicate with a human with an intellectual or physical disability. Because like I said when we get there it's the last straw and we have to diffuse the situation. You don't stand there talking to them unless they've got a knife or something.

"Police live on the grinding edge of social conflict, without a well defined, well understood notion of what they are supposed to be doing there" (Campbell, 1970, Fogharty, 1990) Responsive policing includes such activities as the appointment of advocates, working with people with intellectual disabilities in the community, forging and maintaining contacts with other service providers in the world of welfare, and generally being involved in the lives of the people they deal with. These are clearly expressions of the ideal and it is valuable to note that this ideal was articulated by both the police and the people consulted during the Law Reform consultations. The extent to which the ideal matches the reality is a little more perplexing.

When discussing the extent to which police could afford to be individually responsive to the public they deal with, one police officer remarked:

Police are always watching their backs because there are so many watchdogs out there. There is no organisation that has more social and political watchdogs. So it is hard to think welfare minded when they are thinking about saving their own skins all the time.

Similarly an article on the changing role of police officers in Australian society expressed the view that:

> The conflicting demands and expectations surrounding police, order, maintenance, community service and crime fighting responsibility, are primary sources of police frustration. Society expects its police to be efficient crime fighters and, at the same time, skilled peace keepers. The pressure generated has been particularly debilitating because, not only do the roles conflict, but so do the skills and temperament needed to perform them.
>
> (Fogharty, 1990: 44)

Agents of social control need few sophisticated and sensitive communication skills. In marked contrast community policing demands a high level of interactive communicative ability. There is little wonder that confusion is the outcome of such competing forces within the corporate policing mind.

Different manifestations of responsive policing

There are other expressions of responsive policing. Co-operative contracting is one such expression developed under the guidance and care of a community worker, a solicitor and a senior constable in a provincial city in country N.S.W. The motivation for the development of this procedure arose as ".....a response by welfare, police and legal representatives recognising the difficulties experienced by people with an intellectual disability and the criminal justice system." (Thomas and Fernandez, 1993: 1)

This paper explores the range of problems which confront the offender, the victim and the witness when they collide with the criminal justice system. In particular, co-operative contracting offers a new approach to the control of criminal behaviour predicated on co-operation between service providers in designing a schedule of activities agreed to by all the parties involved. It is an intricate set of procedures which sets out the rights and responsibilities of all the parties concerned.

> The Co operative Contracting model recognises the individual needs of people with an intellectual disability and therefore by creating an individual criminal justice plan, it is complementing a welfare and legal persepective."
>
> (Thomas and Fernandez, 1993: 14)

Another response to the problems of communication which confront police officers can be found in etter working relationships with other groups who have different perspectives on people with an intellectual disability. Some of these arrangements have been formalised and others operate by virtue of the goodwill and hard work of the police and the service providers involved. Inter depart-mental protocols have been developed in some instances. Such activities represent a commitment to the rights of the person with an intellectual disability and provide guidance about how the apparently conflicting police roles of social control and human welfare can be addressed.

In Queensland the site of such a developing relationship was the Alternate Living Service in Ipswich which provided a range of "... accommodation options available to intellectually disabled persons. In most cases alternate

living means sharing a house or a flat with a group of people, but there are other options such as renting a room in a boarding house or hostel." (Beckey, 1987: 4) Protocols were developed for dealing with common police interactions so that residential workers and police had an idea of clear procedures to be followed

All the activities described above are creative solutions to problems inherent in the present methods for questioning and communicating with people with an intellectual disability whether as offenders, victims or witnesses. As such they should be encouraged and evaluated as possible ways of improving the communicative process between police and people with an intellectual disability.

Issue 7

Training methods

"All a policeman wants to know is: How am I going to solve this situation? We have absolutely no training whatsoever in dealing with people with an intellectual disability...not a thing." (NSW Police officer)

The greatest convergence between police officers and those people represented in the Law Reform Commission consultations occurred in the area of police training in communicating with people with an intellectual disability.

This issue reflected the concerns that had been raised in all the arenas of discussion and served to focus attention on practical solutions for complex and often ill defined problems. Everyone knew where to begin new training initiatives even if they were partially unclear about where they were going or why. The solutions that were advocated form the basis of the modular material which complements this report. Both the content and the method of presentation was initiated and reviewed in the light of suggestions proposed by police officers and people with an intellectual disability. One of the strengths of the teaching material lies in these beginnings. These suggestions were then complemented by insights gained from literature relating to professional development. Nine themes emerged from this cross reference of material and are presented here. These are followed by a brief description of training initiatives which may suggest directions for police training in the area of communication and intellectual disability.

Training days

The suggestions for training materials and appropriate methodologies to support these materials frequently began with the idea that training days were a suitable time to begin educating police officers about intellectual disability and its relation-ship to communicative ability.

We have training days. I find that sometimes there are slots within the training days that they are trying to find people to put in so that would be the best idea - verbal lecture.

The type of lectures offered were also seen to be important. Some police officers felt that:

It's no good getting up there and reading all these things from a book and then someone asks you a question and you have no back up. You've got to have some sort of credibility. Make the information relevant to police work.

Information and training also had to be flexible enough to suit the practicalities of the police station. Long involved workshop activities were not considered at all helpful. Ideally it was thought that the materials should be packaged in one hour segments:

We have Patrol Training days here and what we need is something that is brief enough to present in one hour over a number of weeks. Just to get the basic message across.

The people consulted during the Law Reform Commission consultations were similarly clear in their articulation of the training needs of police officers. They all believed that police needed to know about intellectual disability and were responsive to the challenge of describing what this training should entail:

They should be given education about what it is and how you should approach a person with an intellectual disability, and how to help a person with an intellectual disability. They should go to school, do a special course and then know if people like us come up.

Distrust of academics

There was a profound sense of distrust about 'academic' input into training. If lectures were to be given by people outside the police force then they had to have their academic feet firmly planted in the realities of the policing world:

It's no good having some you beaut academic with all these fanciful ideas talking to a group of coppers because the coppers are going to switch you off after 20 seconds. You have to deal with facts and reality, not what would be nice and what would be pretty and the ideal world. 'Cause it's not like that. The coppers are not interested at all. They don't like the warm fuzzy stuff.

A similar distance was placed between the teaching of the Academy (Goulburn) and the 'real world of policing'. A number of officers expressed the view that an over-reliance on academic issues did not serve the interests of the police as well as they might.

They're reading from the book when they're down there at the Academy. And they're reading from the book and the book's been written by learned people... and it only looks good on paper.

Problems of time and information overload

Time was seen as a constraining factor as was the sheer amount of all kinds of new information coming into a police station. The sense of discrimination and the inability to cope with the weight of material was raised by a number of police officers who also felt that this mass of paper had led to a disinterest in learning:

It's difficult trying to find the time to train them.

The hard thing is that in group training or any sort of police training there is so much information . Because we are not dealing with a single topic in the police force. Everything is just across the board for everybody and it is very, very difficult to remember everything. You get information overload. You are doing four topics a day and someone comes in and stands up there, and it is usually some boring sod talking to you about fingerprints, and you switch off. This creates an attitude that all information is not relevant.

Police officers expressed a deep aversion to paper work:

Paper has a tendency to be associated with the garbage bin. We have so much paper work. All the time just handouts. We've just reached saturation. Just verbal is the best.

Similar comments have been made by researchers in the area of professional development

> Education has been bombarded with packaged staff development programs in the last few years. Schon (1987) suggests that the bulk of learning is not from packaged programs but rather through continuous action and reflection on everyday problems
>
> (Schmale, 1994: 32)

Visual Input

Lessons from other areas of policing provided guidance on this new area of training. One police officer with wide experience in preparing materials for on the job workers suggested that:

To get a simple message across what we did was make up some posters and stuck up some posters in the stations. Nice big glossy ones that everyone could see, and that seemed to work well. If you wanted to get a simple message across with contact numbers that's the way to do it. Put it up somewhere where everyone can see , and then as they are doing their job and they get a bit stuck, they think: "Oh there's that poster", and they go and have a look at it rather than to go through books and generally give it all up.

Videos were also considered a valuable training resource which police responded well to:

That video that VICPOL put out is great. Coppers have heaps and heaps of training notes and they just sit and they don't read them. They're not given any help. They go into a folder and you stick it on the shelf and when you leave your job you chuck it in the bin. I'm a visual person so for me to see is enough. Some people aren't - so what we need is a mixture of training materials. If you want to give them a handout of something make it a one page handout. The five points, the same five points that are on your overhead. Have your overhead as well so that you get your visual people as well.

Videos were regarded as useful because, as one training officer explained, the message could be got across quickly, it could be made accessible for future use, and it was a 'stand alone' resource which required no structured support.

As the Training Officer here a video is a most important thing the most important medium to get your message across. I've just shown one today on domestics. We had one on epilepsy. And they are really good. You see the vital signs and what you can and can't do. You just give a video that may be 20 minutes or so long, show them what to expect, what the signs are and how to deal with different types of disability. Keep the videos in the library so that if people want to have a look they can.

Visitors

Both police officers and the people who contributed to the consultations organised by the Law Reform Commission recognised that one of the best ways to improve communication between parties is to introduce them to each other in contexts other than adversarial ones. Human contact, understanding and an exploration of new relationships was seen by both groups to be very helpful:

Possibly have someone who is intellectually disabled come out to the Training Day - someone who is capable of standing there and just explaining what their needs are and probably police would listen more.

The value of such arranged meetings was described in terms of providing opportunities for communication. As one police officer commented:

Talking plays a terrifically big role... a lot of things just get resolved by talking.

Participants in the Consultations echoed these ideas:

We could have a discussion group like this and get police stations involved.

Contact with people with disabilities, such as talking to them and working with them, was seen as the best way to learn about intellectual disability:

You should get people with disabilities who can speak up for people who can't talk well.

The value of meeting people with intellectual disabilities was also related to addressing the myths and legends which some police officers had seen grow up within the service. These myths and legends did not contribute to their equality before the law and resulted in people with an intellectual disability being treated as children. As one police officer interviewed said:

I think with police they need to realise that these people with an intellectual disability are normal people who are slower than the average person. A lot of police don't treat them that way though. They treat them as a child and don't take any notice of them. And that's where I think that if police had more personal contact with them - a Training Day for example. Instead of having someone come down and talk to us about people with an intellectual disability, you go out to a sheltered workshop and spend a day with the people there and you meet some of the people there. Because they often give us the kind of information that is worthwhile, but police just don't take any notice because they don't know what to do with it.

Informal seminars were seen by police officers as being a practical extension of these meetings because:

You are actually involved with people and you are talking to people and you tend to remember almost everything that happened that way.

One participant in the Consultations expressed the value of such informal and gentle interactions in terms of the mutual benefit which both groups would experience:

The police should be made to talk to people with an intellectual disability - to have a special unit with special training to understand how people with a disability react. They have them (special units) for every other sort of nomination you can think of. They may want to go to a police station but they are too afraid or upset. People with a disability could work with them and with people in the community to be voluntary policemen. There are just not enough police to go around. The idea has to be put forward by someone with a disability.

Active participants

Police officers articulated their need to be active participants in their own learning. For this reason practical activities were considered one of the best teaching methods:

I've found the best way that I've learnt is practical experience - the only real way to learn. You can read and the information is still stored in your head and you can utilise that, but when you start learning is when you just have to do it. When you are faced with the problem. Knowledge into practice.

Scenarios were thought to ease police officers into the difficulties of practical policing. They provided realistic experiences, preserved the intellectual independence of the officers, encouraged them to hypothesise about solutions to problems and circumstances, offered helpful feedback, and involved the participants in lively learning:

Hands on scenarios and things like that are usually the best kind of training especially if you're the one that gets pulled out of the crowd to actually do it in front of everybody. You never forget that one and you always get it right for the rest of your career. It's verbal and visual at the same time, and it's the best way to learn.

Scenarios were also very popular with police officers because they offered a pool of valuable and practised information which helped them to respond when they were confronted with reality :

I think you learn better if you go through say scenario situations with a person with an intellectual disability. So that when you get into a situation which is work related then you can actually refer back to what you've learnt and you can communicate or understand their point of view.

Intrusion of welfare role

Police officers frequently articulated the dichotomy (and supposedly inherent contradiction) which exists between the social welfare role of the police officer and the law enforcement role. This opposition was often played out in the day to day world within and between the social welfare and police services.

The distrust of "welfairies" (from the Department of Community Services) was based on a perception that the two groups worked on different and competing levels. The cultures of the two groups clashed. Their roles were seldom seen as complementary:

When a social worker comes out and talks everyone switches off. But everyone makes jokes about social workers. But if you know what a social worker does, you can use them to advantage. You can make them do the dirty work for you. A lot of them are on a different level to the majority of police. They don't sort of mix, so there's friction. But you can use them to great advantage. Social workers can throw what you are doing into chaos. We've got to be practical. We want to get our information and once that's done we want to get out. All the warm and fuzzy stuff is tremendous but we have got certain things that we have to get.

The chasm between the welfare role and the social control expectations which surround policing have been articulated in many places by many people. One consequence of this chasm can be seen in the area of communicating with vulnerable groups. There are "certain things that we have to get " and the evidentiary demands of the criminal justice system often mitigate against the interests of witnesses. Police officers often feel caught and ill prepared. One attempt to deal with this problem can be seen within the Victorian Police Service (Victoria Police (1993) Video and audio taped evidence project: *Course No 1. Outline and Information Package,* prepared by Sergeant Zammit).

Victorian police are being trained to "... develop a distinct set of skills to enable them to conduct video taped Statements of Interview for presentation in court as Evidence-In Chief for the witness" (Victoria Police, 1993: 2) The impetus for the course comes from concerns about the effectiveness and equity of taking evidence from child victim witnesses and other vulnerable groups. It begins with the premise that vulnerable groups require particular communicative care to ensure that their rights are preserved and their stories recorded and presented in the most legitimate way possible. This course will instruct the police students in "... a structured interview technique which takes account of developmental, evidentiary, investigative and procedural matters". (Victoria Police, 1993: 2)

One special feature of the course is that contributors include the Royal Children's Hospital, the Department of Health and Community Service-Staff Development Branch, Latrobe University Communications Disorders staff, Director of Public Prosecutions, and the Prosecutions Division of the Victoria Police. The course sets out to cover and connect the different roles which police can adopt relating to interview techniques. These are in turn related to the issues which impact on the effectiveness of the communication and the status of the interview. Issues and perspectives which are accommodated here include child development and abuse related conditions, evidentiary considerations, investigatory requirements and procedures, and mental impairment. The latter includes a reference to mental illness, dementia, brain injury and intellectual disability.

This course has grown out of an integration of agencies, perspectives and briefs, all of which impact upon the offender, the witness, or the victim.

In spite of policy changes within the N.S.W. Police Service a number of police officers expressed their distrust of the new roles they were being required to take on:

Police are not very good at change, and they are not very good at accepting their changed role which has developed over the past ten years. Basically they are conservative sorts of people. There are a few strays on the edge. But on the whole they are conservative sorts of people who like their money coming in and they wear blue and black. Even when they wear plain clothes, they wear blue and black.

The reasons for the inbuilt conservatism of police officers and their reluctance to admit a changed society or a changed set of rules for themselves are extremely complex and a flavour of the complexity is contained in the following comments made by an officer when he said:

I think when you are dealing with police you are dealing with people who are not really educated in the welfare field. Their ideals are more towards the enforcement one and they keep the welfare one right out of it. And it is really separate to them. They say they will leave things up to the court. This is a major bind for them because if they don't take action they're in

trouble, and if they do take action they're in trouble. So they look up what the regulations say and they play it by that. You're looking at an organisation which is scrutinised by ICAC, the NCA, Internal Security, the Ombudsman, Internal Affairs, your own Patrol Commander. And all these groups are looking into what police do. So you are telling police that if you step outside of the boundaries you are going to find trouble. So what they are doing is that they are playing it by the book of rules and the instructions which is issued to each section - four volumes of rules and instructions which you are expected to read.

A focus on the practical

A number of police officers mentioned the need to match training to the culture of policing. The culture was variously described but ultimately came back to a perception that effective policing was fundamentally a practical activity. This acknowledgment implied that any training program had to begin with the preconceptions of the officers and work from there. Some police felt that they needed to have their intellectual and social horizons extended regarding intellectual disability, but if any such an activity was to succeed it had to first confront the security which their present attitudes afforded them. The training had to further provide them with compelling reasons for change:

Coppers aren't very good at touchy feely exercises. Coppers like it black - they like it white. They're not really good in this grey bit in the middle. That warm fuzzy feeling is not their cup of tea at all. It's not that coppers don't care. It's not that they are unkind. It's just that they don't feel comfortable with it and therefore they don't want to know anything about it. We need some exercises to allow coppers to see that the world has different people in it.

Reflective decision making is one strategy for encouraging introspection about what we do and why (Langer and Colton, 1994). Cultural change is based on individual growth and development, changes in relationships and changes in perception. For this reason no training exercise can be looked at simply in terms of providing packaged information. It will be relegated quickly to the dusty shelves of the police station. Engagement and involvement must percolate through all the training activities. Reflective decision making, where an individual, pairs, or small groups of police can scrutinise their responses to people with an intellectual disability, guarantees that these demands are satisfied. Because the status of people with an intellectual disability within the criminal justice system is determined directly by the response of others, it is those responses which form the substance of scrutiny and change.

> Reflective questioning is a technique in which one person prepares and asks questions that are designed to provide opportunities for the respondent to explore his or her knowledge, skills, experiences, attitudes, beliefs and values. In a professional development setting, the typical goal is to broaden and deepen the respondent's understanding with respect to self, work roles, and/or performance.
>
> (Vee and Barnett, 1994: 17)

> The goal of the activities is to engage (educators) in the examination of their practice from a variety of perspectives in the hope of constructing new meanings and understandings. Once the person has developed skills of reflection, these skills will most likely be used in everyday activities.
>
> (Langer and Colton, 1994: 4)

A number of police officers addressed the inherent conflict between social intervention and social control by reverting to a focus on 'facts'. Training had to provide clear directions and prescriptions which could be guaranteed to work in a large number of situations. The underlying assumption was that each problem confronted by an officer could be legislated for in terms of providing recipes for action:

Police like dealing with facts. I think something straight down the line that tells you what to do and when and how. Police work has a lot to do with - especially when it comes to criminal matters - it's just the facts that you want. I think police feel more comfortable when dealing with facts. I think the police would be better off with summaries. Handy hints.

A mixture of methods

Other police officers thought that a balance of methodologies was the most appropriate way to approach this training issue:

A combination of having someone act out the part and put them in a position of: "What would I do here?" - alongside some knowledge of the background of the people and their shelters. What they are for. Where they are. What sort of things they expect from people like us when they go out. The knowledge to know they are there.

The complexity of the issue of intellectual disability and the need to provide appropriate training materials was recognised by a number of police officers. They thoughtfully explored some possible solutions:

There is no one (single) thing that can be done for these special groups and this is the problem I always face. And it's really hard to formulate something that is. You sort of need a hard core of things that you have to do and then you need some fuzzy things around the outside that need to be done in certain situations.

Some officers suggested that a combination of video materials supported by structured lecture packages was a helpful mixture of teaching media. As well a number thought that:

Other things to add to that are to get welfare workers to come and speak to the group. And also depending on availability. If it is not too much for them - they might be able to speak to police in small groups, three or four say. And also have a list of contact persons too, as part of your package for each patrol - you need a list of contact people so that you know who you should speak to.

Discussion

> There is a basic and underlying requirement for all members of the criminal justice system: the police, lawyers, the courts, probation officers and related workers, and officers within the correctional establishments, to be educated in dealing with intellectually disabled persons. The education needs to address the awareness of persons with intellectual disability, attitudes, communication techniques and flexibility where possible in order to produce the fairest environment.
>
> (Cahill, 1993: 14)

The recognition of the need for more training in all the areas outlined by Ron Cahill is undisputed. The individuals consulted during the Law Reform Commission's consultations echoed these views with infinite pain. The inability to recognise that a significant number of participants within the criminal justice system have an intellectual disability, and the inordinately high representation of this group within the prison population must encourage us all to look again at police training and do so with some degree of haste.

Police officers themselves have a graphic appreciation of the best methods to use for on-the-job-training. The recruits at the Academy have similarly clear ideas about pedagogy and content which will help them to respond to the dimensions of this problem more sensitively. One of the recommendations from Caroline Wilson's 'Final report on the incidence of crime victimisation among intellectually disabled adults' was that "....a unit ... which describes the nature and behavioural concomitants of intellectual disability, as well as the risk of victimisation of this group, could provide some practical skills for dealing with intellectually disabled victims, witnesses and offenders." (Wilson, 1990: 16)

The problems associated with training police officers in the area of intellectual disability and effective communication emphasise problems experienced in a more generic way across the whole range of policing activities.

> Various approaches have been suggested and tried including recruitment of those educated in the social sciences; parallel training of recruits in the socio behavioural sciences and investigative skills; an incorporation of social, behavioural, human relations, psychological, legal and investigative elements into a unified curriculum. Separate training in social, psychological sciences may give police a better understanding of the values of social and mental health workers but the dichotomy between the implied values of social support and social control may only further emphasise the role conflict experienced by police. This may result in a more extensive acceptance of the traditional social control value system.
>
> (Vollmer, 1991: 47)

This author supports the notions suggested by the police and people with an intellectual disability. Interaction, activity, participation and involvement are the educational keystones to effective training in this area.

On a practical level 'action research' is a strategy used in education to achieve the outcomes identified above. Action research is a process of collecting and responding to information about your own practice or a

situation that concerns or interests you. The simple act of keeping a journal can provide the raw material for action research and the evidence from teachers in schools is that the use of such a strategy for professional development leads to increased effectiveness, a growth in professional sense, and an increase in the likelihood that they will become not only agents of change themselves but increase their commitment to the work at hand. (Bennett, 1994)

Lessons from education generally, requests from people with an intellectual disability, and the insights of police experience when taken together provide a wealth of data upon which to base police education. The 'Cleartalk' training modules in Section 3 of this publication is one way of encapsulating this range of advice.

However in our consideration of all the issues one single response seems appropriate. That is, the acceptance and use of a form of dialogue in police questioning which somehow alerts police officers to the effectiveness of their communication.

In the next chapter, the 'Cleartalk' report suggests the adoption of just such a procedure; the Assessment of Communicative Effectiveness (ACE). This is followed in Chapter Six with some concluding statements and a set of summary recommend-ations on police practice and the communicative needs of people with an intellectual disability.

The other major result of the issues chapter is to be found in Section 3 immediately following the final chapter of the report. It is organised as a set of five modules which have been developed in direct response to the 'Cleartalk' report and the voices it seeks to accommodate.

Chapter 5

Can you hear me? Are you listening? Assessing communicative effectiveness between police and people with an intellectual disability.

Because people with an intellectual disability seem to be the victims of failed communication it is appropriate to explore ways in which communication can be made more effective. One of the basic problems that seems to contribute to ineffective, even discriminatory, communication is the basic idea about just what goes on when (any) people talk to each other. One standard and widely accepted view sees communication as the 'sending and receiving of messages'. This creates two unwarranted assumptions. The first is that the 'meaning' of a message is supposedly contained in, and therefore perceived through, only the words.

The second is that responses to those words stand as 'the communication'.

Both miss the essential human point that 'meaning' is constructed as people speak. It changes and grows with situation, intent, history and status. The 'communication' is in fact an interactive and reciprocal phenomenon defined by the response of each person to the other. This insight into how human communication really works is reflected in cognitive theory, communication studies, and analyses of the functional and pragmatic aspects of language in use. When we are concerned with interviewing, collecting evidence or taking statements, these insights should be able to inform our appreciation of what is going on when we talk to each other and how we might do it differently. Unless we do, then the functional outcome of 'asking questions' will remain simply 'getting answers'. Consultations with people with an intellectual disability, interviews with police officers, studies on acquiescence, and the pressures of procedure, confirm that such answers do not necessarily represent either 'meaning' or 'communication. Under these circumstances the day to day situations which depend so specifically on language use may not fulfil the conditions of 'fairness' as set down in the Commissioner's guidelines.

The 'fair' interview might be constructed in three different but related ways:

1. The British Code of Practice on interviewing for videotaping gives advice about the **structure** of any interview. This advice is worth taking because it provides a universal format which serves as an organiser for all parties.

2. For the purposes of **enhancing responsiveness** of interviewees, the techniques of cognitive interviewing have a good track record in increasing the volume and quality of response. This style of interviewing also encourages the questioner to constantly go beyond the surface meanings of answers.

3 In order to recognise the **interactive** and **reciprocal** nature of all communication and its **pragmatic** features , a third response has to be made which both allows and requires the interviewer to assess their own contribution to the communication.

For this latter purpose we are proposing the use of a simple procedure, the **Assessment of Communicative Effectiveness**. It is a procedural encapsulation of the 'Cleartalk' ethos and is reflective of informed insights into the nature and workings of human language communication. Its aim is ultimately to make the person with an intellectual disability a party to, rather than a victim of, communicative situations - situations often fraught with stress and punitive consequences. For people who are resilient and articulate such assessment is more likely to happen as a natural aspect of the communication. Interruption, revision, interposing supplementary information, making connections, responding to shared meanings, gauging intent, evaluating consequences, all come together to create the fabric and texture of communicative processes and acts. Consciously recognising and responding to these dynamics and forces is the basis of our control over language. For those who do not exercise such ready control, a system of checks becomes an imperative before the respondent falls prey to the consequences of their own communicative acts.

Again, in many situations and amongst most people, such checking can occur as part of the situation as they review common stories, establish topic and purpose, take turns, build meaning, and move towards ever more clearly established roles, be they ones of co-operation, antagonism or distance. Whenever people talk to each other, they respond continually to the response of the other. In situations grounded in authority, justice, protection or evaluation, the dominant or more capable party has a duty to acknowledge this set of dynamics.

In a general sense police officers are ready and willing to respond to such responsibility and duty. Providing and justifying a procedural framework is of the essence when considering how to conduct interviews which are fair to people with an intellectual disability.

I think if it wasn't so obvious it would be quite hard to recognise a person with an intellectual disability. Depending on what capacity you were dealing with them, you might have to do a lot of interviewing to establish that. I'm not really sure"

The challenge is to carry out that identification in such a way that communicative effectiveness is what is being assessed and that when such identification is made appropriate responses are suggested.

A.C.E.
(Assessment of Communicative Effectiveness)

1 Awareness of self in time and space (by supplying information about self and environment)

If a person is not aware of where they are and why they are there then statements and responses from a person in such a state have to be interpreted accordingly. This does not mean 'disregard the person' or 'dismiss what they say'.

Can you tell me your name? Where do you live? Where are we now?

2 Acknowledge identity of actors (by saying what is happening)

In order for a communicative situation to proceed effectively there needs to be some acknowledgment by all parties of the identity of the others (even if it is to identify each other as strangers). People identify each other most readily by their appearance or what they do using a label ("You're a policeman".) Although this seems to identify each other clearly, there may in fact be no conceptual understanding.

Do you know why you are here? What are we doing?

3 Confirm hearing (by repetition)

A conversation can proceed on the social form of its development. Head nodding, affirming gestures, and answers of 'yes' or 'no' all help construct the social features of a conversation. It is possible however that such behaviour is simply a set of actions, and reactions, which are not in fact responsive to what is being said. (In difficult situations I have done just this when confronted with an angry person on a foreign railway station!)

Could you please tell me what I just said?

4 Demonstrate comprehending (by retelling)

People can talk and fuel the form of conversation (head nodding, asking undetailed questions, getting others to respond) but may in fact not comprehend what is being talked about. Communication can only be deemed to be clear when both parties have access to common understanding of what is happening to both of them. To ignore this feature of communication makes it possible for meaningless surface features to stand for communication.

In your own words tell me what we have just been talking about?

5 Demonstrate control (by requesting clarification)

Participants in a language episode control the conversation to a greater or lesser degree. This is done by allowing, inviting or restricting each other's access to such features as topic choice, turn taking, role change, topic change, wait time, interruption, response quality ... and more!

Ask me something you want to know more about.

6 Demonstrate global understanding (by reconstructing interviewing episode)

Effective communication operates when people know what's going on. This suggests a general understanding of the situation. To see people lined up in the street only makes sense when we know they are waiting for a bus. Similarly conversations do not make sense unless we have some kind of notion of the purpose behind it.

I've been asking (a few/lots of) questions. Tell me why (why do you think) I have been asking you these questions?

7 Demonstrate knowledge of consequences (by predicting possible options/ outcomes)

When people talk with each other it is usually with some kind of intent in mind. Control over communication often lies with the person who is mindful of the (possible) outcome of any communication episode. To not understand that there are consequences which flow directly from responding to others suggests a total passivity which defines the victim.

What do you think will happen to (you) now/when you leave the station?, What should we do about....?

8 Procuring assistance (by supplying name and contact information)

It is often appropriate to call on the services of a third party to help create a meaningful interaction between police and public. Although it may be obvious to the police who this person should be, the person being interviewed may have their own need and preference.

Do you want me to call/phone/find a friend/helper/carer to help you while you talk to me/I ask you questions?

Discussion

The quality of responses to each of these questions will alert the questioner to the communicative effectiveness of the interaction. To not apply this or an equivalent assessment leaves open the possibility that 'asking questions' is a surface activity, geared only to 'getting answers'.

A positive, negative or ambiguous response to any of the above questions does not constitute a proof of any sort. Rather they will provide solid clues to the responsiveness of the client to the interviewing situation.

There are two good reasons for asking such questions. One is that the responses themselves may provide significant clues to the communicative effectiveness of the interaction. The other is that they enforce an interactive basis for the communication rather than a behavioural one. It challenges the notion that 'getting answers' is enough for effective information and fair interviewing. With each stage of questioning the interviewer will have to make two kinds of decisions:

1. What adjustments do I need to make in order for this communication to proceed effectively?

2. Do I and the interviewee need the attendance of a third party for either general support or for language facilitation?

Following the above procedure obviously challenges the advisability of 'sticking to the script' when asking questions of suspects, victims or witnesses. By getting people to elaborate, confirm, retell and predict we create and offer a real alternative to just 'getting answers': an alternative which is itself an assessment of communicative effectiveness. The communicative effectiveness is conditional upon the ability of both parties to 'hear' each other. This in turn is dependant on how well we 'listen'.

Can you hear me? ... Are you listening?

Chapter 6

Summing up

> ... people with an intellectual disability, particularly the mildly intellectually disabled, are a social sub-group requiring particular care on the part of the various agencies and individuals who comprise the criminal justice system ...
>
> (Mark Ierace, 1989: 5)

The 'Cleartalk' report provides a challenge to the centrality of the verbal record. The verbal record is not necessarily the best or most complete record of an interaction, especially for those with less than articulate verbal skill. For so many reasons the bald written or spoken word is not an adequate encapsulation of communicative quality or dimension. But other records, like drawings, acting out, puppet manipulation, picture pointing, are seen to be too negotiable or interpretable for the purposes of procedure and administration.

There are two kinds of responses to this dilemma.

The first is to challenge the validity of this latter claim and possibly to find that the position is in fact based on a notion of majority; 'It's good enough for most of the population and for the rest - they simply miss out!'. If we take the issue of language rights seriously, this position is untenable and it is incumbent on those in control to devise better ways of facilitating the voice of all.

The second is to accept the centrality of the verbal record and to undertake to make it as complete as possible and to also incorporate into that record an assessment of just how reflective of participation and comprehension that record is.

When people talk more goes on than the simple coding and decoding of information. Goals are set up and worked toward; games are played; and moral orders become established (Penman, 1991). Talk can include or exclude one or the other parties to some degree (Brennan, 1993). To not accept this proposition is to knowingly endorse the continuing fact that the voice of so many is lost in the codes, ways, and styles of the dominant discourse (Walker, 1982). Possibly the treatment of people with an intellectual disability within the criminal justice system is the baldest example of the negation of those discourse rights.

That these rights are worth defending, and defending on behalf of people with an intellectual disability, stems directly from our definitions of problems and (subsequent) perception of needs. The prevalent and totally offensive attitude contained in expressions like "No brain.! No pain!" or "Can't get blood out of a stone" totally negate any movement towards responsiveness and appropriate procedure.

Those general community perceptions are keenly reflected in the attitudes and ideas of many police officers.

The community generally feels uncomfortable with the unusual or the unpredictable. Lurking in the corporate community mind is a profound fear of intellectual disability. The "There but for the grace of God go I" syndrome does not produce a sympathy that is readily translated into social action. People stand off immobilised by their inexperience or ill informed fears.

If people don't look OK, if they don't look like everybody else, people sort of stand off them and think that there is something wrong, other than they are intellectually handicapped. Some of them sort of think that they have the plague or whatever.

One respondent during the Law Reform Commission consultations maintained that police had the same reaction to people with an intellectual disability. The assertion that an intellectual disability is an illness with a potential for transmission through contact is a strong image pervading the language of all participants:

We need the police to understand us and help us if we have problems. They help normal people with problems. They help normal people not us. They think that we have a sickness and are cruel to us.

This attitude clearly spilled over to police officers:

People are a bit frightened, whether they want to get close or become involved. Police are very unsure about how to go about handling situations with people with an intellectual disability. I've never had any problems though. I consider myself to be a person who can communicate alright with everybody.

The 'us' and 'them' dichotomy between 'normality' and perceived 'abnormality' accounted for the distance and discomfort which police officers often felt.

Sometimes I feel uncomfortable. I suppose it's the same as with sometimes you feel uncomfortable with any person. I suppose they're really no different. Some people you just get on better with than others. It's not a disliking of these people, but you just don't click with them straight away.

Police officers who had contact with people with an intellectual disability and who were able to articulate their needs, commented that the entire community needed to be liberated from their fears of contact and potential harm.

The whole community needs to be educated. The whole community needs to recognise that people with intellectual and physical disabilities are a minority. - but they are a minority that anyone can join.

In this respect being tagged as being a bit slow has obvious advantages over and above any other classification.

It is neither satisfying or honest to conclude the 'Cleartalk' report with an appeal to some 'other' agency or force to 'do something first'. Rather it is more appropriate to note that the police service and the community are responsible for and to each other. The N.S.W. Police Service, because of the historical moment brought about by heightened awareness both within and outside the

service, desire for change, support from advocacy groups and the N.S.W. Law Reform Commission, the commitment of individuals, and the results of research, has available to it a window of opportunity. Pedro Fernandez and Cate Thomas in the Foreword suggested that police could lead the way in creating a moral change within the criminal justice system. Fair communication provides that foundation.

The 'Cleartalk' report provides the rationale for this by bringing together the voices of people with an intellectual disability with those of the police in the context of an interactive and transactional perspective on communication. This rationale and the development of ideas flowing from it form the basis of the 'Cleartalk' training and publicity materials accompanying this report.

The recommendations of the 'Cleartalk report follow. These are followed in the next section by the curriculum materials which are in the form of five training modules developed in response to the report and those recommendations.

Recommendations

In order to facilitate communication between police and people with an intellectual disability, ways of communicating beyond either the expected or the convenient have to be acknowledged. Some of the ways of achieving this effective communication are guided by the following principles:

- Communication situations can be supported or augmented in several complementary ways.
- Interviewing environments can be either sympathetic or otherwise to the communicative needs of individuals.
- Allowing time for questioning and responding both in terms of overall time and time allocated for each question acknowledges the needs of the individual.
- Using interactive questioning techniques helps to gauge the understanding of the person being interviewed.
- The recommendations of the 'Memorandum of Good Practice' (H.M.S.O., 1992) for conducting interviews, i.e. the use of cognitive interview techniques and the establishment of phases of interview, will enhance communication.
- The admission of a third party will facilitate fair communication. A citizen advocate or person occupying a similar status is most likely to achieve this.
- The use of props such as pictures, objects, signs and communication boards may be used to facilitate communication.
- Above all else police and others need to recognise that communicative ability varies greatly across the population with whom they have contact, and that effective and fair policing is contingent upon recognition and response to these differences.

These recommendations have to be accepted as **policy** so that **practice** which acknowledges and responds to the communicative needs of people with an intellectual disability can proceed.

SECTION 3

The 'Cleartalk' Training Modules

Introducing the 'Cleartalk' modules.

From the comments offered by police officers and people with an intellectual disability, it is clear that certain training methods have more appeal than others. The following principles, suggested by the participants, have been taken into account in the design of the training materials:

- Experiential learning is valued for its inclusiveness and stimulation
- Learning should be visual and appeal to the eye first.
- Case studies and scenarios are engaging and provide real contexts for learning.
- Visits and visitors are a non threatening, sympathetic and non combatative way of both parties coming to terms with the existsence of each other. Contact and context are a powerful learning mixture.

Over the last ten years there has been a proliferation of literature on styles and theories underpinning adult learning and training.

> As a result it is not surprsing that a number of common themes emerge.
>
> 1. **The role of the self.** The focus of attention is on the individual learner. The effectiveness with which the individual learns is a function of the development of self. The individual learner is self directing and the process is the growth of self. The individual, following Kolb can determine his or her own preferred learning style. The ultimate goal of the learning process is the fulfillment of self; what Maslow referred to as 'Self actualisation'.
>
> 2. **Experience.** Learners draw on their fund of experience and learn through experience. Thus, the best instructional design must incorporate experiences which the learner undergoes in a self directed manner rather than relying on traditional didactic techniques.
>
> 3. **Facilitation.** The role of the teacher needs to change to accommodate the emphasis on self anf experience for adult learners. The teacher/trainer becomes a facilitator, helping the students by clarifying their personal goals in the learning process and creating conditions for these goals to be achieved rather than directing the content and process of learning."
>
> (Smith, 1992: 39)

Within the police service political influence is blatant, frequent and prompted by enquiries, events, or the media. Little wonder that the political dimension of training is one often denied or at best relegated to the sidelines of educational debate. However it must not be overlooked. Training police to recognise and then more effectively communicate with people with an intellectual disability is a political activity in that it possibly reorganises relationships and activities within the society. It has implications for the entire criminal justice system.

> A political activity encourages people to ask awkward questions about why things are the way they are, whose interests these arrangements serve, and how things might be different. In a political activity, people challenge the accuracy and legitimacy of those issues and problems defined as important and sometimes substitute their own issues and problems. Any time teachers encourage students to think in different ways, to explore alternative interpretations of their experiences, or to challenge the accuracy and validity of society's 'givens' then their teaching must, in this sense, be considered political.
>
> (Brookfield, 1991: 189)

The theme which runs through the modules deals with making communication more effective. This theme has obvious application to all areas of policing . Its implications are not confined to dealing with people with an intellectual disability although for the purposes of this study they have been our main focus. All facets of policing will benefit from effective communication between police and members of the public.

The 'Cleartalk' study, through the process of collating police attitudes and ideas about communicating with people with an intellectual disability, raised a number of questions for police which deserve attention.

- Communication, what is it?
- How do we judge our effectiveness as communicators?
- What is intellectual disability?
- How can we test whether our communicative partner is keeping pace with us?
- What can we do if they are not?

These general questions need to be answered before the more subtle dimensions of the issue of police responding to the communicative needs of people with an intellectual disability can be dealt with. These questions are the curriculum springboards from which the 'Cleartalk' training materials have been developed.

The intention is that each of the five modules can stand alone. However, when they are taken together, they will create a fuller, more expansive picture of the problems involved when police communicate with people with an intellectual disability.

At all stages of the curriculum police officers are encouraged to value their own experiences, build on them and use their wealth of knowledge to learn more about the people they deal with and the effect police work has upon their lives.

The expressions by police officers about the pressures of time, the demands of their occupation, and their learning preferences have all been given attention in the design process. Each outcome is supported by a number of independent activities. The modules can be picked up and put down in different configurations depending on time and cirucmustance.

Ideally they should be worked through by groups of police officers. They can however provide the basic material for independent study. It is an advantage, but not mandatory, to have a facilitator.

The modules presented here are regarded as introductory and many topics deserve further and more detailed design and study. The section on 'cognitive interview' is a good example. This is a concept about interviewing practice which seeks to gather and validate information by asking questions which require the respondent to answer from a range of perspectives. In Australia and around the world this single interviewing strategy is presented to police officers, and other professionals who interview clients, in anything from week long training sessions to fully fledged courses.

Like many other topics covered in the 'Cleartalk' training modules, it deserves more detailed treatment but here it only rates a mention and an activity. However despite its brief treatment, it supports the single, most important idea to emerge from the 'Cleartalk' study - that is *effective communication occurs when we recognise appropriately and respond accordingly to the communicative needs of all concerned*. All ways of creating the **conditions** for this to happen have to be considered. Time, space, style, state of mind, expectation, and pressure, all affect the possibility of achieving **effective** and **fair** communication.

The five training modules following are about establishing such conditions.

Each of the modules, in addessing a single topic, is introduced in terms of outcomes for the participants and these are subsequently pursued through a series of learning activities.

> Each module has been designed using information from police officers and how they best learn. Much of that information is based also on the newly emerging principles of adult learning. The training materials may represent quite a change from other courses you have undertaken. They may also be different in terms of the participation of you the learner. Your experience, involvment and reflection are highly regarded and are central to the process.

Module 1
Intellectual disability: the impact on the individual

Module 2
Recognition, and perceptions of people with an intellectual disability

Module 3
Questions, questions, questions

Module 4
Assessing communicative effectiveness

Module 5
Responsive policing

Intellectually disabled offenders and victims is a joint initiative of the Victoria Police Department, Office of the Public Advocate and Community Services Victoria. It is a training package based on a video 'Justice for All', which examines a number of scenarios involving people with an intellectual disability and police. It is recommended as a complement to the 'Cleartalk' training materials.

It is available through the Victoria Police Department media services unit for $150 (see bibliography for other details).

Module 1

Intellectual disability: the impact on the individual.

At the completion of this module students will be better able to:

- describe the context within which people with an intellectual disability operate.
- recognise the fact that people with an intellectual disability are not always visible within the community.
- identify the percentage of prison population who have an intellectual disability and the implications of these figures for policing.
- describe the rights of people with an intellectual disability.
- understand the stresses of living which impact on people with an intellectual disability.
- contextualise the role of the police within the lives of people with an intellectual disability.
- explore the implications for police talking to people when they come to the station.

Activity 1.

Browse Have a quick browse through this module. You will see that it has a lot to do with people with an intellectual disability, their rights and their treatment within the criminal justice system.

Think Before you go any further take just a few minutes to think about what you want to try and achieve by completing this module of work. Your thoughts are expected to be personal and honest. Keep at it. *Your* experiences and *your* ideas are the valuable raw material here.

Write Collect your thoughts and write a list of your own personal aims for this module. The list need only include four or five items ... but they are yours.

Activity 2.: The prison population and people with an intellectual disability.

Read

Well I've had 27 years as a police officer. I've had no contact with people with an intellectual disability as offenders. I've heard of it, but not personally - But I"ve come across victims because they are very unsuspecting. (Cleartalk: 33)

The recent study completed by Susan Hayes (Hayes, 1993) for the Law Reform Commission clearly demonstrates the need for early identification of people with an intellectual disability, and the punitive legal consequences which result from the absence of such recognition. The figures cited below show how disproportionately high was the representation from this group in presenting before the local courts. One hundred and twenty participants were interviewed in four local courts around NSW. An overall total of 36 (30% of the sample) had results on one or both tests which indicate the likely presence of mental abnormality which implies that they would have serious difficulty in comprehending or coping with court procedures, and may need further expert assess-ment.

The implications of the study are obvious, far reaching and volatile. '... lawyers and magistrates may find that one in four people appearing before local courts have intellectual deficits (including difficulties in verbal skills, memory, reasoning and understanding) which make it extremely difficult for them to participate adequately in the process of justice '. (Hayes, 1993: 53) cited in Cleartalk: 33-34)

2.5% -3% of NSW prisoners have a mild or moderate intellectual disability. Over 10% are in the borderline range of intellectual disability. This amounts to about 2000 prisoners passing through NSW gaols each year. (Simpson, 1989: 10)

Talk Using the figures and information given above, discuss the following questions with the person beside you :

- What particular factors could possibly account for the high level of people with an intellectual disability within the NSW prison system?
- What is it about **the person**
  the circumstances
  the legal system that might lead to such results?
- What particular characteristics of intellectual disability make people more vulnerable as victims of crime ?

Write Make some quick notes on the questions asked above.

Activity 3.

Read Have various members of the group take turns in reading aloud the comments presented under the following headings:

Comment 1... *Have you ever met a person with an intellectual disability ?*

> ... we are confronted with a picture in which people with an intellectual disability are isolated by the perceptions of police officers. They exist in only small proportions, mostly between 0 and 3 % of the population as they present to police. They do so only by virtue of obvious associated characteristics. And they are rarely seen to occur as suspects or offenders. (Cleartalk: 29)

Comment 2... *I don't think that there are any around.*

> Police generally do not recognise that the proportion of people they have contact with who have an intellectual disability is anything like the number indicated in the Susan Hayes account. In this respect they are reflecting the common attitudes and perceptions of the wider community.

Comment 3... *I didn't think that they got into trouble.*

> "I've had a couple of experiences with people with an intellectual disability. But really these sort of people don't come to our attention for the criminal type of thing very often. Most of our experiences are when they don't come home on the bus , or go missing somewhere. I know a couple of them who were causing trouble in whatever you call them 'live out houses', and after about the 10th time of the police turning up we had to make a decision. And the end result was that they stayed in the B Remand Centre until someone could actually do something about the situation." (Police Officer), (Cleartalk: 63)

Comment 4... *I've hardly had anything to do with them.*

> "I've not had much contact with people with an intellectual disability ... only on a couple of occasions." (Police Officer)

Comment 5... *I've seen them a couple of times.*

> "I've had a little bit to do with people with an intellectual disability... a couple of jobs when I was working on the roads - and one young girl who comes into the front office of the Police Station quite regularly and just wants to talk to you - and a young boy who is in one of the homes and he just goes walkabout and we just take him back." (Police Officer)

Comment 6... *Very limited.*

> "Very little experience actually. Very limited. Only what I have come in contact with when I am out on general duties." (Police Officer)

Comment 7... *He shouldn't be there.*

"No experience ... none at all that I can recall ... not out on the street. When I was working at the cells there was one person there who was disabled mentally in some form and probably shouldn't have been in police custody but he was ... but there was a nurse there and he was being treated and being looked after by her." (Police Officer)

Comment 8... *They are only victims ... not offenders.*

"In the majority of cases my experiences of people with an intellectual disability is with them as the victim." (Police Officer)

Comment 9... *Not as offenders*

"The experiences I have had with people with an intellectual disability have ranged over 16 years with the Police Department. It has mainly been to do with burglary, or theft or assault. There have been a number of cases where people with disabilities have gone missing or they have walked out of their shelter. The latest one we had was where we found a lady sitting on Coolamon Drive. Totally lost and she was miles away. But not a great extent offenders...more victims and witnesses." (Police Officer).

Comment 10 ... *Is it fair?*

"... laywers and magistrates may find that one in four people appearing before local courts have intellectual deficits (including difficulties in verbal skills, memory, reasoning and understanding) which make it extremely difficult for them to participate adequately in the process of justice." (Hayes, 1993: 53)

Comment 11... *Is this justice?*

"2.5% -3% of NSW prisoners have a mild or moderate intellectual disability. Over 10% are in the borderline range of intellectual disability. This amounts to about 2000 prisoners passing through NSW gaols each year." (Simpson, 1989: 10)

Organise Arrange the comments above into two groups. Give each of the two groups of comments a heading based on your reading of them.

Talk What we have in the snippets of conversation above are some very different viewpoints, opinions and evidence about the number of people with an intellectual disability within the criminal justice system. Discuss in groups the following questions:

- How can we explain the differences?
- What do these differences of opinion mean for the person with an intellectual disability and what do they mean for police ?
- How well are the police doing their job?
- Are police not picking up on intellectual disability and therefore placing people with an intellectual disability in situations which are difficult and incomprehensible to them?.
- Are people with an intellectual disability therefore more likely to end up in prsion than someone else?
- What can be done?

Explore Think about why police identify victims and witnesses with intellectual disabilities but find it hard to identify a suspect or perpetrator with an intellectual disability. Also think about what we should be looking for and explore the consequences for the individual who is not recognised as having an intellectual disability.

Scenario

At 11pm on Friday night you are called to a quiet street in a reasonably affluent suburb by concerned neighbours. They are worried about an argument which has been going on for some time on the footpath. There are two males involved and one appears to be carrying a weapon of some kind.

You reach the street and immediately move towards the area where the two men are arguing. One is aged about 25 and the other is an older man. You can pick up bits of conversation. The younger man is waving an electric drill in the air and it appears that he is about to strike the other man with it.

You move forward and disarm the young man and escort him to the police car. After taking a statement from the older man involved you return to the station to question the other person.

You offer him the caution and then proceed with your questions. He offers only very brief answers and these tend to always be 'yes' responses. He looks confused and quite stressed.

He is released with a warning.

You learn later that the young man is employed in the local sheltered workshop and that the older man involved had borrowed his electric drill and returned it in a damaged condition. He has a reputation amongst his neighbours for aggravating this young man.

Think

- How else could you have handled this situation?
- Did you need to do more? Or know more?
- How could you have found out?
- What does it tell you about people with an intellectual disability?
- Are the signs always obvious?
- If it had been a more serious situation and the young man had hit the older man with the drill and fractured his skull, where would the young man be likely to end up?

Usually it's not very hard to pick up ... sometimes they could be intoxicated or you might think that they are intoxicated. Or they might be a bit slow and their speech is slurred. Usually if you put your average question to them and they look at you a bit blankly or ask you to explain it to them again you sort of understand that you might be dealing with somebody that doesn't understand and that you've got to start simplifying things a bit.There's no point explaining things to them, that they don't understand and they'll just get upset. (Police Officer)

- What are some of the signs of intellectual disability ?
- How can police officers recognise this disability and then do something about it?

Scenario

An adult male with a mild intellectual disability appeared to be suffering from depression when he presented himself to police. He seemed suicidal. Police were concerned anout his state of mind and the risk to himself. They took him to a hospital for psychiatric assessment.

The result of the assessment indicated he did not have an illness or an intellectual disability. This was despite documented evidence that he had an intellectual disability, having attended a special school, worked in sheltered workshop and was serviced by a disability organisation.

This young man presented so well that professionals were unable to establish an intellectual disability. He was not able to communicate his true concerns (leading to depression and suicide) to those who needed to hear them. It is more than likely that he was unable to understand what was being asked of him by either the police or the psychiatrist. (Cleartalk: 8)

Activity 4.

Read Here are some words from Kerry, a person with an intellectual disability, about her perceptions based on experiences both new and old

" A lot of them would not understand what anything is about - the one's that don't know how to read and talk proper."

"Someone might find out that they don't read and they sign anything they might put in front of them."

"Read it out and get them to understand what it is all about."

"Somebody who can help them come along with them and get them to read it and see what they say."

"Something happened to me a long time ago and I told the police and they believed this other bloke...the one who stole my money...but they wouldn't believe me. They talked to him more."

"A bloke out in Magniliquin....he came round and he got on me and he raped me and I told my father and mother.... and Dad rang up the police and the police come out and everything and they talked to him more than what they talked to me.... and they took notice of what he said to them.. So in the end he got off and the police took a statement."

"They might never believe me."

"I would go an talk to somebody else and get them to come along with me ."

Talk From Kerry's comments above what rights is she missing out on because of her intellectual disability? In small groups discuss each of her comments.

Scenario

A female about 30 years of age walks into the police station. She appears to be very distressed. She is dressed neatly and she is clean and well groomed.

You realise that she is trying to tell you about something that has just happened to her. It seems to be serious.

You have four other people waiting at the counter, one of whom is becoming quite agitated because she is being made to wait.

Imagine Imagine three different and alternative ways for handling this problem given the following three alternatives:

1. Your likely instant reaction.
2. Your reaction if you knew that the person had an intellectual disability.
3. Your reaction if the young lady had an independent third person with them.

Present In groups of three present your results to the whole class.

Develop Make a list of things that you need to know more about in the area of intellectual disability.

Reflect What are the implications of everything you have learnt in this module for fulfilling the Commissioner's Guidelines (NSW Police Service) on questioning developmentally delayed or drug affected people? *Commissioner's Instruction 37.14* (NSW Police Service)

If you suspect the person being questioned is developmentally delayed or drug affected, question the person in the presence of an appropriate adult, unless there is proper and sufficient reason for not doing so.

The term 'appropriate adult' means:|

- a relative, guardian, friend, or some other person responsible for the care or custody of the suspect concerned.
- a person who has professional experience in dealing with such persons but does not include a police officer or a person employed by the Police Service.

If an appropriate adult is unavailable, use a responsible adult who is not a police officer or a person employed by the Police Service.

The term 'proper and sufficient reason':

as a general rule the term proper and sufficient reason does not include mere difficulty in finding an appropriate or responsible adult. However, it is recognised there will be instances when police will have to ask questions without an appropriate or responsible adult being present , e.g: in cases of urgency or where police are not endeavouring to elicit legally admissable evidence.

General advice-investigating officer.

- before questioning you should be satisfied that the person fully understands the caution and the implication of any admission following the caution:-
- make it clear in simple terms that the person has the right to remain silent
- take care when questioning to ensure each question is understood
- do not assume that the person understands even simple questions
- phrase questions in a way that avoids a simple yes or no answer.

This will ensure the person has some understanding of the question."

Module 2

Recognition, and perceptions of people with an intellectual disability.

At the completion of this module students will be better able to:

- identify the common, if misinformed, perceptions which guide the recognition of people with an intellectual disability.
- empathise with the vulnerabilites of the person with an intellectual disability during their dealings with the police and the law.
- describe some of the guidelines for the recognition of people with an intellectual disability.
- appreciate that communication with all people is more effectively viewed as an interactive rather than a static process.
- explore the implications of the interactive view of communication and how it does and does not fit with present police culture and practice.

Activity 1.

Browse Have a quick browse through this module. You will see that it has a lot to do with people with an intellectual disability, their rights and their treatment within the criminal justice system.

Think

Before you go any further take just a few minutes to think about what you want to try and achieve by completing this module of work. Your thoughts are expected to be personal and honest. *Your* experiences and *your* ideas are the valuable raw material here.

Write Collect your thoughts and write a list of your own personal aims for this module. The list need only include four or five items.. but they are yours..

Activity 2.: Recognising people with an intellectual disability

Write In 2 minutes write down on a sheet of paper your definition of intellectual disability.

Read The following comments are taken from transcripts of interviews with police officers. They represent some police efforts to come to terms with the problem of trying to recognise people with an intellectual disability. Read these comments aloud.

Mostly when you go to converse that's when you find the biggest trigger that says there's a problem . (Cleartalk: 62)

You don't mean physical...just intellectual. I don't know very much. I suppose it (recognition) would come when speaking to them. They could possibly have a speech impediment, or a lot of them could. But I don't know whether they are actually intellectually disabled. (Cleartalk: 62)

I suppose you can't always tell. That's the problem and there are obviously people with obvious facial and physical characteristics, and you would say then that they are intellectually disabled. But with quite a lot of people you can't tell physically so until you actually communicate with them in some way, you would obviously not know this.. (Cleartalk: 63)

Their speech ... mannerisms ... out of the ordinary...

The way they speak and act ...

Slow speech and confused looks.

I don't know what you think but I don't think that we have many people that we would class as intellectually disabled. I've seen a lot of what I consider to be not 'the full quid'. They're not intellectually handicapped. I wouldn't class them as intellectually handicapped. However they don't seem to have their full faculties about them and I don't know where intellectually handicapped starts. (Cleartalk: 45)

Basically communication. You can't communicate all that well with them. Sometimes they are a bit vague with their answers and then again sometimes you don't know if they are intoxicated....But in general it is just the communication. (Cleartalk: 63)

Walking sticks - wheelchairs... they usually have a disabled label on their cars. (Cleartalk: 39)

How I recognise them is well mentally or physically. The one I know is physically - the way he walks and talks.... (Cleartalk: 45)

Talk How many of you have had the same experiences as the officers in the interviews?

Write In groups, using these police comments, isolate some of the descriptors of intellectual disability. Put these down on one side of a large piece of paper and display in the room.

Take some time to walk around and look at other people's ideas.

Think Here are some other ways of looking at intellectual disability.

"... a person with an intellectual disability is someone who will be likely to have difficulty with reading, writing, comprehension and money skills. He or she will have difficulty with community survival skills and in social situations. The disabled individual is likely to be unaware of many of the subtle and sometimes even gross cues that guide our everyday behaviour and keep us out of situations in which we may be the victim of crime. Furthermore when a crime has been committed an intellecutally disabled person will have less knowledge of the range of actions available to him or her." (Wilson, 1990: 2)

"... it is now generally agreed that in deciding whether or not a person is intellectually disabled, a number of criteria must be used - cognitive abilities; capacity for abstract thought; comparison with other members of the population of similar age...; social, adaptive and self help skills; and enviornmental factors, such as stimulation or deprivation." (Hayes and Craddock, 1992: 7)

"Essentially, a 'person with an intellectual disability' denotes a person whose capacity for intellectual functioning is signficantly lower than the norm. ... From this reduced intellectual capacity flows certain behavioural distinctions. A person with an intellectual disability may have difficulty in grasping abstract concepts, handling complex tasks, and absorbing and assessing information at a 'normal' rate.' (Ierace, 1989:1)

Write In groups add the information from these new sources to your list of descriptors.

- What sort of picture do you have now of the person with an intellectual disability?
- Is it a bigger one ?
- What has changed?

Activity 3.: Guidelines for recognising people with an intellectual disability.

Read Within the paper presented by Ron Cahill (Chief Magistrate, A.C.T.), in a sub section entitled 'Communication Difficulties' there is a list of characteristics of people with an intellectual disability. As a list it alerts us to some of the possible problems confronting a person with an intellectual disability trying to communicate effectively:

"A person with an intellectual disability may have difficulty in giving reliable instructions because of their communication difficulties such as:

- a restricted vocabulary
- a short attention span
- difficulty in understanding questions
- responding to questions either inappropriately or with inconsistent answers
- memory difficulties
- difficulty with abstract thinking and reasoning
- responding to questions in a manner thought to be wanted by the interviewer."

(Cahill, 1993: 6)

Activity 4.: The person with an intellectual disability and their dealings with police

Read Here are some snippets from people with intellectual disabilities talking about their particular problems. There are also some comments from police officers .

"... talking to you not fast;"

"Law people ... don't (shouldn't) use big words. "

"We need someone to sit down and hear what happen - someone to talk to ".

"People with a disability can't stand up for themselves so they are easy targets. People take them for granted. "

"Listen to what (people with an intellectual disability) have to say, give them time -they (police) need to know that you are disabled and can't talk too fast ".

"You get a scary feeling going through you if they ask you questions."

"When I had my bike accident I was scared when they were interviewing. The policeman said:"*Give me one good reason why I shouldn't lock you up.* " and he was waving keys around."

"Police should keep things simple."

"The police might keep repeating the question until the person gets the idea to say 'yes'.;

They might be afraid to say 'no' in case they think they are silly.;

If they are not sure, the volume of the policeman's voice might convince them to say 'yes' without really understanding. "

Write Summarise these problems by choosing key words.

Put these key words on another large piece of paper and tape it to the wall.

What does the picture look like now from the other side of the counter?

Module 3

Questions, questions, questions

At the completion of this module students will be better able to:

- recognise that there are different varieties and types of questions
- ask questions in different formats
- contextualise the practice of questioning within the broader framework of communication.

Activity 1.: What people with an intellectual disability think about questions.

Reflect When taken together the following comments suggest that police officers can and should become aware of the effect of their speech on others. It seems that officers have the capacity to control the communicative effectiveness of situations involving people with an intellectual disability.

"We need the police to understand us and help us if we have problems. They help normal people with problems. They help normal people....not us. They think that we have a sickness and are cruel to us...."

"I think communication is the most important part of policing. Your mouth is your greatest weapon. It will either get you in trouble or it will get you out of trouble." (Police Officer)

Read Here are some comments from people with an intellectual disability about being questioned by police. Read them aloud to each other.

"Suggestions for ways the police could help witnesses with an intellectual disability included:

"The police should go more easy on you..."

"Such as talking to you - not fast.";

"(Talking to you) face to face"; or

"Listen to what (people with an intellectual disability) have to say - give them time. They (police) need to know that you are disabled and can't talk too fast."

"If they are interviewing you, it's hard - you can't understand the words, they don't want to do anything about it."

"You get a real scary feeling going through you if they ask you questions."

(The above comments come from the NSW Law Reform Commission Research Report Number 3, 1993)

Talk Using the above comments from people with an intellectual disability, talk about the problems these people might have with the types of questions that you ask.

- What sort of questions do you ask as a police officer ?
- How many people in the class ask questions in the same way ?

Explore Read the following questions and explore the reasons why people could find them difficult to understand and answer. Make a list of your reasons.

"As I have explained to you, Smith and I are making enquiries in relation to (an offence or occurrence)....I am going to ask you further questions which will be recorded using the word processor. You are not obliged to answer unless you wish to do so, but whatever you say will be recorded and may later be used in evidence. Do you understand that ?"

"Do you agree that prior to commencement of this interview I told you that I intended asking you further questions about this matter?"

"Do you agree that I also told you that my questions and any answers that you gave to those questions would be recorded, using the word processor, by Smith, as the interview took place.?"

"Do you agree that I also told you that at the conclusion of the interview you would be given the opportunity of reading through the interview and signing it?"

"Do you agree that I also told you that at the conclusion of the interview you would be given a complete copy of the interview?"

"For the purposes of this interview, what is your full name, date of birth and address?"

"What is your occupation?"

Questions and answers continue on from here and the proofs of the matter are established and guilt or innocence of the offender .

(From Fernandez, P. (1993) *Briefing Paper: Police and People with an Intellectual Disability.* NSW Police Service, Policy and Programs.)

Activity 2.: Asking questions and getting answers

There are many factors which influence people's ability to answer questions. The types of questions themselves can be obscure because of the way they are formed, as seen in Activity 1. But there are also things that we often take for granted because we deal with questions every day. We need to understand how the questions we ask affect the answers that we get, and how other influences determine how well people answer the questions which we ask.

Think and share Share your thoughts with the other members of your group.

- What is the best environment for asking questions in ?
- What would be the ideal environment for questioning a suspect who you knew had an intellectual disability?
- How do these conditions match up to police practice ?
- What effect do fear and stress have on our ability to answer questions ?

Read and browse The February 1993 Law Reform Commission consultations with people with an intellectual disability were impeccably planned and carried out. Some lessons that were learnt are very helpful for police in communicating with people with intellectual disabilities. Below are some comments from the facilitators of these consultations.

- Under each comment list three significant words from the statement.
- When you have done this for each chunk explore the lists with your group.
- How many of you had the same words listed ?
- Place these commonly identified words on a big piece of paper.

"Despite the generally high level of communication skills and the carefully structured discussions, there were still some areas of misunderstanding and confusion. The potential for increased misunderstanding and confusion in a less controlled and friendly environment, such as a police station or a courtroom was apparent."

"In order to maximise understanding, the strategy for discussion consisted of simple stories put into clear context, containing information and events relevant to the lives of the participants....Even in these circumstances, there were significant misunderstandings, non responsive answers and incorrect usage of words that had been explained in groups."

"For some of the participants, periods of apparent understanding were interspersed with periods of concentration lapses."

"A number of participants were easily able to recount their experiences in great detail but had difficulty in recalling certain details such as names or the order of events...When involved in the criminal justice process, whether as suspect, victim or witness, it is often the kind of detail that becomes important. "

"There was a considerable number of non responsive answers to questions. Some participants took everything literally. Similarly some participants would seize upon one word in a question or comment and relate a story that was unrelated to the issue under discussion."

"The tendency of people with an intellectual disability to answer "Yes" to questions asked by a person in authority or to give the answer they believe is expected, has often been commented on and has obvious dangers within the criminal justice system, particularly in the context of police investigations."

"... the apparent understanding of a person with an intellectual disability must always be carefully checked. "

"... the importance of non verbal cues to the person with the intellectual disability."

"... the presentation and attitude of the police, lawyers, judges and other authorities within the criminal justice system may be as important as the language and methods of questioning that they use."

One way of accommodating both the requirements of interview procedure and the communicative needs of (all) people is to construct the interview episode in terms of **phases.** By doing this we can cover not only the specific questions we have to but the general conditions which are basic to a a full and information rich interview session. Thinking in terms of 'phases of interview' should not restrict fair and communicative questioning practices. And it should not detract from the constant requirement of interviewing officers to rigourously pursue details and connections in their questioning. By following the phased appproach we treat the interview as " a process in which a variety of interviewing techniques are deployed in relatively discrete phases, proceeding from general and open to specific and closed forms of question." (HMSO, 1992: 15)

The UK Home Office, after wide international consultation, decided on a set of interviewing procedures for children involved in cases of alleged sexual abuse. So the focus here is upon vulnerable people as (potential) witnesses. However at the time of interviewing it is not always clear that a particular person is either a witness, a victim or a suspect. Being aware of and using phases of interview seems to be a good practice for all or most interviews.

Read Following are some of the pointers contained in the chapter entitled "Conducting the interview- the basic approach." from *Memorandum of Good Practice* (HMSO, 1993).

- How might the advice given be directly usable and appropriate for all interviews?
- What are the implications for using such an approach with people with an intellectual disability when you are aware of their intellectual disability, and when you aren't?

Extracts

Phase One- Rapport

... to build up a rapport between the interviewer and the child...(the child) is helped to relax... If used correctly, it should supplement the interviewer's knowledge about the child's social, emotional and cognitive development ... The rapport phase can also indicate a need to review an initial decision. A rapport phase, however brief, should never be omitted.

The interviewer should bear in mind that some (people) will assume that because they are being interviewed, they must have done something wrong.

... the interviewer should consider initiating a short discussion in which he or she can convey... the need to speak the truth and the acceptability of saying "I don't know" or "I don't understand"

Phase Two-Free Narrative Account

... (the person) should then be encouraged to provide in his or her own words and at his or her own pace an account of the relevant event(s). This is the heart of the interview and the interviewer's role is to act as facilitator, not an interrogator. Only the most general and open-ended questions should be asked in this phase ... every effort must be made to obtain informaton from the (person) which is spontaneous and free from the interviewer's influence.

In all cases the interviewer should resist the temptation to speak as soon as the (person) appears to stop doing so. The interviewer should be tolerant of pauses, including long ones, and silences. The interviewer should also be tolerant of what may apppear to be irrelevant or repetitious information from the (person).

Phase Three-Questioning

A) Open-ended questions

The first stage of phase three involves open-ended questions which ask the (person) to provie more information but in a way that does not lead...or put him or her under pressure ... it should always be clear...that to reply "I can't

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remember" or "I don't know" is perfectly acceptable. Ask only one question at a time and don't use confusing grammar.

Some questions beginning with 'why' may be interpreted by children as attributing blame or guilt to them. Repeating a question soon after a (person) has answered should also be avoided since that may be interpreted by (people) as a criticism of their original response. Research shows that persistent repetition of a question may lead a (person) to give an answer he or she believes the interviewer wants to hear.

B) Specific yet non-leading questions

This stage allows for extension and clarification of previously provided information from the free narrative and subsequent phase.

During this stage question s should not be leading to the extent that the question implies the answer although in some cases it may be inevitable that questions will refer to disputed facts. However during this stage questions which require a 'yes' or 'no' answer, or ones which allow only one of two possible responses, should not be asked

Try to use language appropriate to the particular (person)....calendar dates or days of the week may be inappropriate. It may be more productive to refer to life events, such as before or after Christmas/birthday/holiday ... For time of day, mentioning meal times, television programmes ... and the like could be useful. Interviewers should try to pick up on the 'labels' ... for various incidents and use these in the questioning.

If inconsistencies have occurred ... they can be gently probed during this stage of the questioning.

C) Closed questions

If specific but non-leading questions are unproductive, questions might be attempted that give the (person) a limited number of alternative responses. For example "Was the man's scarf you mentioned blue or yellow, or another colour, or can't you remember?" If such a question permits only one or two responses then the responses may not necessarily be a good indication of what is in the memory.

It should be remembered that if the answer given to a limited response question concerns a fact disputed in court, the question may then be considered to be leading.

At the end of this stage the interviewer may conclude that further questioning is necessary and that leading questions might be appropriate. However, it must be understood that a leading style of questioning may produce replies which are excluded from criminal proceedings.

D) Leading questions

... a leading question is one which implies the answer or assumes facts which are likely to be in dispute....interviewees' responses to leading questions tend to be determined by the manner of questioning rather than valid recall. (Some people) may be more willing to respond to 'yes/no' questions with a 'yes' response. If, therefore, questions permitting only a 'yes' or 'no' response are asked in this phase, these should be phrased so that those on the same issue sometimes seek a 'yes' response and sometimes a 'no' response.

Avoid leading questions ... avoid questions which invariably require the same answer ... go back to an earlier phase if new information emerges.

Phase Four-Closing the Interview

> Every interview should have a closing phase ... make sure (the person) is not distressed ... go over the important parts again using the (person's) language ... return to the rapport phase, if necessary ... allow him/her to ask questions ... give the (person), or accompanying person, a contact name and phone number in case the (person) later decides that he or she wishes to discuss further matters with the interviewer.
>
> (HMSO, 1993: 15-21)

Discuss Discuss in small groups the questions above and identify the aspects of phased interviewing you think need to be accommodated in your own practice. Try to identify also any legal reason why phased interviewing should not be used.

The advice on phases is about the general structure of an interview. It attempts to create the conditions for collecting the 'best possible story' from the interviewee. In module 4 we shall consider another set of suggestions about specific questions to ask, which are geared towards gathering information and assessing understanding. This is the ACE (Assessment of Communicative Effectiveness) procedure.

Activity 3.: Some tools for good communication

The NSW Department of Community Services document *Procedures for Responding to Sexual Assault of Adults with an Intellectual Disability* (in use in 1993) offers some helpful guidance for interview. It further lists some of the factors which influence the effectiveness of an interview with a person with an intellectual disability.

Procedures "The person should be asked to repeat back in their own words what was said to them to ensure that they have understood.

People with an intellectula disability may have a shorter attention span and may need regular and frequent breaks

Extra time may need to be spent on getting to know a person with an intellectual disability in order to ensure that the person feels at ease and comfortable in talking

Questions should be kept simple and concrete. Abstract concepts should not be used.

There may be a need to be especially sensitive to issues of self blame or guilt, especially when introducing the topic of police. If available and the client wishes, it may be useful to include the police in the interview when discussing whether to report the assault or not.

It is very important to check out what supports the person has, especially the safety of the place the person is returning to.

It is preferable to do as much of the interview jointly with the doctor as is possible to prevent the client having to repeat the story.

To facilitate the communication process in the interview situation, other information such as picture cards, anatomically correct dolls etc. may be used. "

(NSW Department of Community Services, 1993: 5)

- Which of these helpful hints about asking questions and getting answers apply to the day to day activities of police officers ?

The 'Cleartalk' report makes some recommendations about good communication which take into account the experiences, needs and perceptions of both police officers and people with an intellectual disability. They are on the following page.

Principles of Good Communication ...

The principles for promoting communication which is both effective and fair, and which the police service might reasonably be expected to respond to are :

1. Establish the existence of a shared way of speaking and acknowledge that there may be the need for a communicative medium or style beyond the 'ordinary' or the expected.

2. Create a phsyical and social space within which the participants can focus on each other and the task at hand.

3. Allow for two kinds of time; overall time for the interview and wait time for responses.

4. Clarify the purpose and intent of the occasion.

5. Validate respones by ;
   a) testing for acquiesence
   b) seeking alternative expressions from different persepctives

6. Acknowledge the possible value of:
   a) a third party
   b) an augmentive system of some kind
   c) a skilled colleague familiar with the challenges of communicating with a person with an intellectual disability."

(Cleartalk: 76)

List Write down any of the points above which are either unclear or require more explanation. Also list any points which you would find too difficult to accommodate in your practice

Activity 4.: The Cognitive Interview (often referred to as CI)

There are 5 general principles of cognition (how we understand), and memory retrieval (what we remember and in what detail). These are:

Context re-instatement ... in which people are asked to "cast their mind back" and create an image of the 'scene' which you are going to talk about.

Varied retrieval ... in which descriptions are elicited in terms of, for example, shape, colour, relationships, physical setting.

Multiple representation ... in which descriptions are elicited in terms of how someone else (X) would describe the scene and how someone else (Y) would describe it. It also includes descriptions which are expressed in terms of different senses (how would it smell?) or different representations (draw, dance or sing).

Focussed retrieval ... in which the respondent tells about a single detail in the scene. A single item, part of the setting or details of a single interaction is described.

Extensive retrieval....in which space, time and atmosphere is created to 'tell more'. This will be an extensive narrative drawing (possibly) on all the previous phases.

Some research evidence suggests that by pursuing questioning episodes in terms of the above, that memory for details and connect-ions can be enhanced. Different people respond differently and it is generally more of a strain for interviewers rather than for interviewees. Interviewers have to consider how best to pursue the questioning as more information comes to light. Gathering information is more than just asking questions. It is about creating the right conditions for each interviewee to retrieve information, and then to communicate that information.

Investigate Choose a single incident which happened recently and describe it to a small group then subject it to the techniques listed above. Appoint a recorder to keep track of the emerging information so it can be compared with the 'original' untutored version.

Training in cognitive interviewing techniques is being carried out in various police forces around the world and is the subject of sometimes extensive training sessions. All police in Victoria are being given this technique in six days of training. Police forces in England are trialling the technique and the Los Angeles Police Department has adopted the practice. It has been found to have positive uses in interviewing sexually abused children and has also had positive reports from people concerned to enhance the accounts of people with an intellectual disability.

Activity 5.: Other methods of interviewing

In the activity above we referred to alternate ways of representing meaning such as dancing, drawing or singing a message. One common and easily accessible way to communicate is by pointing. If we are permitted to use words or things in a series it is possible to build up a sophisticated message. Providing the interviewer is willing to facilitate communication, a 'story' can be told.

Construct In pairs draw up on a full, blank piece of paper the following four-square figure as follows.

YES	NO
MAYBE	DON'T KNOW

What you have made is a 'communication board'. This is only one of many possible kinds that you could construct. Others could be made with more details and features and might include pictures or diagrams instead of, or in addition, to words.

Such communication techniques 'augment' our most commonly used one of speaking. For some people, being interviewed by someone who recognises their need, having access to such a system might be their only chance of getting their message across.

Practice With your partner have a detailed conversation lasting at least ten minutes about their movements after mealtime last night. You should not just interrogate them, but rather do what is necessary to have them tell you what they did. When you think you have an informed account, follow up with supplementary questions to confirm details and retrieve extra information.

Discuss In larger groups discuss your experiences and note the conditions under which 'successful conversations' operated.

Construct By yourself, jot down aspects of another (possibly more extensive) communication board which might serve to augment an otherwise unsuccessful encounter for an interviewee. In car accident reports we are always asked to do a sketch diagram of the accident to supplement any other accounts we might have access to. If we are not able to make ourselves understood by speaking, having recourse to drawing, writing or pointing is a productive option.

Share In the larger group share your ideas and take notes of any practical ideas others suggest.

Information is the lifebood of a criminal investigation. The ability of investigators to obtain useful and accurate information from victims and witnesses of crimes is crucial to effective law enforcement. Yet full and accurate recall is difficult to achieve. Even experienced investigators may not be familiar with the new developments in interviewing that can elicit useful leads.

Police training at both the recruit and inservice level has generally focused on the mechanical aspects of the eyewitnes interview. Most investigators are taught to rely on the "who, what, where when and why" questions interviewing. Such training may help equip police investigators as report takers but it does not give them the foundation they need to be information gatherers.

(James Stewart, Director, US National Institute of Justice, in Geiselman, 1985)

Module 4

Assessing communicative effectiveness

At the completion of this module students will be able to:

- appreciate the usefulness of an interactive form of questioning
- use the ACE procedure
- identify points in a conversation where communication is not effective
- respond appropriately to such identification

Activity 1.

Browse Have a quick browse through this module. You will see that it has a lot to do with people with an intellectual disability, their rights and their treatment within the criminal justice system.

Think Before you go any further take just a few minutes to think about what you want to try and achieve by completing this module of work. Your thoughts are expected to be personal and honest. *Your* experiences and *your* ideas are the valuable raw material here.

Write Collect your thoughts and write a list of your own personal aims for this module. The list need only include four or five items.. but they are yours..

Activity 2.: Assessment of Communicative Effectiveness

1. **Awareness of self in time and space (by supplying information about self and environment)**

   If a person is not aware of where they are and why they are there then statements and responses from a person in such a state have to be interprete accordingly. This does not mean 'disregard the person or 'dismiss what they say'.

   Can you tell me your name?, Where do you live?, Where are we now?

2. **Acknowledge identity of actors (by saying what is happening)**

   In order for a communicative situation to proceed effectively there needs to be some acknowledgment by all parties of the identity of the others (even if it is to identify each other as strangers). People identify each other most readily by their appearance or what they do using a label ("You're a policeman".) Although this seems to identify each other clearly there may in fact be no conceptual understanding.

   Do you know why you are here?, What are we doing?

3. **Confirm hearing (by repetition)**

   A conversation can proceed on the social form of its development. Head nodding, affirming gestures, and answers of 'yes' or 'no' all help construct the social features of a conversation. It is possible however that such behaviour is simply a set of actions, and reactions, which are not in fact responsive to what is being said. (In difficult situations I have done just this when confronted with an angry person on a foreign railway station!)

   Could you please tell me what I just said?

4. **Demonstrate comprehending (by retelling)**

   People can talk and fuel the form of conversation (head nodding, asking undetailed questions, getting others to respond) but may in fact not comprehend what is being talked about. Communication can only be deemed to be clear when both parties have a common understanding of what is happening to both of them.

   In your own words tell me what we have just been talking about?

5. **Demonstrate control (by requesting clarification)**

   Participants in a language episode control the conversation to a greater or lesser degree. This is done by allowing, inviting or restricting each other's access to such features as topic choice, turn taking, role change, topic change, wait time, interruption, response quality ...and more!

   Ask me something you want to know more about.

6. **Demonstrate global understanding (by reconstructing interviewing episode)**

   Effective communication operates when people know what's going on. This suggests a general understanding of the situation. To see people lined up in

the street only makes sense when we know they are waiting for a bus. Similarly conversations do not make sense unless we have some kind of notion of the purpose behind them.

I've been asking (a few/lots of) questions. Tell me why (why do you think) I have been asking you these questions?

7. **Demonstrate knowledge of consequences (by predicting possible options/ outcomes)**

   When people talk with each other it is usually with some kind of intent in mind. Control over communication often lies with the person who is mindful of the (possible) outcome of any communication episode. There are consequences which flow directly from responding to others.

   What do you think will happen to (you) now/when you leave the station?, What should we do about...?

8. **Procuring assistance (by supplying name and contact information)**

   It is often appropriate to call on the services of a third party to help create a meaningful interaction between police and public. Although it may be obvious to the police who this person should be, the person being interviewed may have their own need and preference.

   Do you want me to call/phone/find a friend/helper/carer to help you while you talk to me/I ask you questions?

Read

There are some significant features of everyday conversation which create the conditions between the speakers for effective communication. Taking turns, checking your partner's understanding, giving each other the time needed to reply, and responding directly to what has just been said, are just some of the ways in which people maintain their communiacrive effectiveness. Such features of conversation are so normal that when the conventions are broken we can feel as if we have lost our 'right to speak' or 'right to be heard'.

In a formal situation, such as being examined in court or questioned by police, these 'discourse rights' are often lost. The situation requires that other 'rules' take over. However in losing those features of conversation that keep us in touch with each other a great deal of communicative effectiveness can be lost.

Role play

In pairs nominate a situation or incident that one of you would like to learn more about.

1. Discuss it as friends meeting over a drink of your choice.

2. Use a standard interviewing procedure to question each other about that incident.

3. Using that same procedure, integrate the ACE procedure as outlined above.

Discuss and record

In small groups (say three pairs), discuss and list the differences in quality of the three interactions. In the process of doing this identify the features of the spoken dialogue which create those differences.

Reflect Clearly effective communication begins with a commitment to understanding the needs of others.

The three propositions below are general expressions about responsive communication. Can you supply the details of a particular incident or situation in order to make them 'real' for you?

- **The focus** of our communication becomes whether a person is successful in their comunication or not rather than whether their response is 'correct' or 'standard'

_____

_____

- **The challenge** for effective communication is often to create 'more context' rather than 'more bits'.

_____

_____

- **The quality** of responses as well as the quantity of information will inform and promote effective and fair police work.

_____

_____

Discuss As a whole class discuss the following questions.

- Do you see any problems in asking questions using the ACE procedure?
- What do you need to do in order to use the 'Principles of good communication' (see modules) in your everyday work?
- How would you respond to these problems ?

Module 5

Responsive policing

At the completion of this module students will be better able to :

- recognise that there are a number of ways of responding to people with an intellectual disability
- identify people and agencies within the community who can assist them in communicating with people with an intellectual disability
- evaluate the different needs of people with an intellectual disability.

"The issue is: what do police do when they recognise they are dealing with a person with an intellectual disability? You have to give them a solid recommendation to work on otherwise they have got nowhere and you are just shifting the problem one step back." (Police Officer)

Activity 1.

Browse Have a quick browse through this module. You will see that it has a lot to do with people with an intellectual disability, their rights and their treatment within the criminal justice system.

Think Before you go any further take just a few minutes to think about what you want to try and achieve by completing this module of work. Your thoughts are expected to be personal and honest. *Your* experiences and *your* ideas are the valuable raw material here.

Write Collect your thoughts and write a list of your own personal aims for this module. The list need only include four or five items.. but they are yours..

Activity 2.

Read and think Here are some suggestions from police officers about ways in which they have solved some of the problems they encounter in communicating effectively with people with an intellectual disability.

"Yeah, we've got a few around town here. We're fortunate. We've got a good relationship with the mental health team to cover the worst ones, and we see them every six weeks when they do their rounds. And if they've got problems with anyone they let us know and we keep an eye on it and contact them back. If they've got a problem with one of them when they come out, they call us in and we'll go with them and assist them any way we can. It's just something that we've developed over the past couple of years. I think we got called to a particular job a couple of years back and the mental health team were involved and we just grew from there. So now it's just a matter that they come out, especially if we are working and they'll call in and we'll have coffee , and we'll talk about the ones that we're concerned about and who we think is off the rails. And they"ll tell us about the ones they've seen that day and any problems they perceive."

"They just need contacts for us. If we're having problems with them we have to have some way of contacting someone who can help us. "

"We have got beyond having just an observer to ensure that rights are safeguarded. The question is: 'Who is now going to have the skills to gather evidence which is of sufficient strength to be used in court ? The police can't sub contract a police job ."

Summarise From the suggestions above summarise the initiatives that these officers have taken.

Activity 3.

Contacts Make a list of people and agencies within your policing area who would be able to assist you in communicating with people with an intellectual disability. Add these names and phone numbers to the poster provided. (A reduced facsimile version appears at the very end of this publication. Full size ones for use in the station have been provided as part of the complete 'Cleartalk' package). Make contact with a number of these people and agencies.

Activity 4: Scenario

VICTIM

Mick is a man who has been given limited work opportunities. Unfortunately he has to work in a sheltered workshop. Mick enjoys his work and generally never complains. Lately work is a nightmare for him as one person is assaulting him all the time. He is unhappy. Twice he has had to go to hospital; once for a cut to the head, another for a suspected broken nose.

OFFENDER

Steve is a man with poor verbal skills. He is frustrated because he cannot communicate. Other workers do things that annoy him, but he cannot tell others what is wrong. He started pushing and shoving which then slowly developed to a full scale confrontation with other workers. He finds this easier than trying to express himself through other forms of communication. Steve loves his work but feels that other workers are getting in his way.

RESPONSE FROM THE WORKPLACE

They are very short staffed with just enough people to instruct and do some of the more complex work that people with an intellectual disability cannot do. They must however guarantee the safety of the other workers and keep the workplace functioning. Unfortunately the workers have limited behaviour management skills.

WHAT HAPPENS NEXT?

Steve is suspended from the workplace for the safety of the other workers. He is devastated. and has difficulty understanding why he is no longer allowed to work.

Due to Nick's injuries the police are called.

WHAT WILL THE POLICE DO ?

- Sorry, not our problem! Ask someone in welfare to deal with it !
- Turn up and take particulars and record the matter.
- Turn up and speak to the victim. Take particulars and record the matter.
- Turn up. Speak to the victim. Take particulars. Speak to the offender. Take no action, but contact DOCS Developmental Disability Team.

WHAT IS THE PLAN ?

1. DOCS ... counselling for the offender so that it is continually reinforced that his actions are wrong

2. POLICE ... visit the offender and have the offender come to the station. Visit the Disability Liaison Offcier where the offcier discusses how the offender is going. Also check on current behaviour .

All people involved monitor the offender's behaviour and meet to discuss what form of behaviour management should take place. DOCS

have the primary role because they have the exeprtise to work on behaviour management.

POLICE are the people who initially respond, establish the offence and bring the offender to understand the consequences and that his actions will not be tolerated.

HOW WE DID IT

1. Speak to workplace manager.
2. Interview the victim. Take statement with a support person present.
3. Interview witnesses
4. Speak to parents or support person for the offender.
5. Speak to the offender
6. If satisfied an offence has been committed and offender admits guilt, inform him of the consequences by visual techniques.
   - show uniform and police involvment
   - show handcuffs - indicate arrest
   - show police truck and restrictions to liberty
   - show cells - what can happen if continued assaults occur

This is intended to show him that his actions will not be tolerated and what will happen to him if he keeps going.

During steps 5 and 6 the people present were :

1. A police officer
2. A member of DOCS Developmental Disability Team
3. The offender
4. His support persons... his mother and his sister.
5. A representative from the workplace
6. The victim and support person.

RESPONSIBILITIES OF EACH PERSON

1. DOCS take over the behaviour management so if they are there from the start they know the story and the players, and act appropriately discussing issues for the future with carers and the offender.

2. THE OFFENDER must understand. Must apologise to the victim. Must participate. Must agree not to commit the offence again.

3. THE SUPPORT PERSON must protect the person's rights. Help to ensure that a fair approach takes place. Monitor how the offender is understanding and participating.

4. THE REPRESENTATIVE OF THE WORKPLACE must see what is going to occur. What behaviour management is going to be put into action and what part they will play in the process.

5. THE VICTIM must be empowered by being shown that something is happening. They need to have their fear relieved and a support person present to ensure that their rights are protected.

Discuss What are the productive aspects of the above scenario which respond to the communicative needs of people with on intellectual disability.

Read and analyse In the transcript which follows there are two sets of interactions. One is between two adults, one a person with an intellectual disability. The second is between the same person with an intellectual disability and a police officer.

- Can you identify which is the more successful communication?
- What is it that anyone does to make it so?

Transcript

Ros	And explain it to you ... what it's about would that be a better way to do it ... the consent form that this piece of paper is asking you to say whether it is OK or not for the information or the tape recording to be used.
Ann	Yeah
Ros	So we're going to talk together today and I've got the tape recorder going. I want to know if you feel that that's alright.
Ann	Yeah .
Ros	And the other thing I want to know is if you feel that you can pull out at any time ... You can say "Stop I don't want to do any more" I think it's very important that people don't feel as though I am kind of taking over and asking you to do all this stuff ... You need to be able to say "Look Ros, stop I don't want to do anymore"
Ann	Yeah. Yeah.
Ros	Or through the other person that is there so you know: "This is all getting too much. Gosh let's stop."
Ann	Mm.
Ros	So the consent form that starts here is ...
Ann	Yeah.
Ros	... is "I" and then your name (going through the consent form line by line
Ann	Yeah.
Ros	... "am willing to participate in consultations and discussion for the purposes of informing the research and development project above" which is ... which tells you all about the project up there which is the one that you know we're working on ...
Ann	Yeah. Yeah.
Ros	... with Pedro and whatever and then it says um here, starting there, "I can understand that I can withdraw from this consultation anytime ... so if you want to get up and walk out ... or you don't want to do it anymore ... just say so, won't you?
Ann	Yeah.
Ros	Um ... (back to the form and the reading) "I also understand that anything that I say will be treated in the strictest confidence and that any comments that I make will not be identifiable with me personally. So when we come to do the report I'm not going to say: "Ann said ... such and such a thing". It won't have any way of being able to be traced back to you. It's just information without um your name. And then down here it says the first party so I fill in your name there ... um the second party um which is me and um the third party which is for this occasion Pedro and then the date and the address. What do you reckon about that?
Ann	Yes.
Ros	Does that seem ... do you thank that people will understand that they can get out of it if they want to.
Ann	Yeah.

Ros	OK. Good. Good. What do you reckon about it Pedro? Do you think that people are going to be able to deal with that consent form?
Pedro	Um Yeah ... What you are going to have to do is right at the end of it I think ... you covered just about everything ... it's good to establish whether people can read and write. And right at the end you should ask and I'll ask it now: "Ann what does the form mean to you?"
Ann	(long pause)
Pedro	If you can tell me what that form means so that both Ros and myself can be happy that you understand what's on that form.
Ann	Its alright for you to pull out if you want to you can ... it's a form for you to give your consent ... and if you don't want to participate in it you can pull out.
Pedro	And you know that you can pick the person that you want to be here.
Ann	Yes.
Pedro	And you were happy to have me weren't you?
Ann	Yes. Yes.
Pedro	If you wanted someone else you could pick them and they could come along. And everyone signs it there.
Ann	Um.
Pedro	Yes, is that right? That everyone signs it?
Ann	Their name.
Pedro	But why do you think everyone signs?
Ann	To give their consent.
Pedro	I think that with other people when we interview them we will have to ask them that because you knew exactly what you were talking about.
Ann	Yeah.
Pedro	And you understood it?
Ann	Yeah.
Pedro	But some people say "Yes" even if they don't understand it.
Ann	Oh yeah I've found that out.
Ros	Have you?
Ann	Yeah ...
Pedro	So do you think it's better Ann?
Ann	Some handicapped kids ... someone might find out that they don't read it and they sign anything what they put in front of them
Pedro	So what do you think is the best thing to do?
Ann	MMM.
Pedro	Ask them about it.
Ann	Yeah, read it out and get them um to understand what it is all about
Ros	Ask them what it's all about?
Pedro	Yes.
Ros	... the only thing that worries me about it is that is like what you said ... kids will sign forms and things ... it's like a form and it has to be like that but it's very formal isn't it?
Ann	Yeah well I didn't understand it.
Pedro	It's a very difficult form to understand for a person with an intellectual disability.
Ros	So we have to make sure that like you told us just then what it means ... we have to make sure that the person understands it. What happens when we have a person with a very severe disability ... someone who found it really difficult to talk ... what do we do about that?
Ann	Somebody who can help them come along with them um oh heck to to ... (long pause)
Ros	... to help them along
Ann	... get them to read it and see what they say.

Some final questions

Answers to the following questions will provide a summary of your experiences with the five 'Cleartalk' Training Modules. Those answers will also provide the bridge to your future practice. The format for asking and collecting those answers is up to you in consultation with the organisers of the training sessions. Some of the options are:

Plan a visit to the police station for people with an intellectual disability which will enhance the understanding of all concerned.

Develop a presentation to be used in further training or for other colleagues.

Create a role play.

Write a formal essay.

Study the bibliography with a view to collecting a wider resource base.

Make a list of other appropriate options.

- What do police have to do to get it right for people with an intellectual disability?
- In dealing with people at the counter how would your communication be changed now?
- What else do you need to know about people with an intellectual disability to help with responsive policing practices?

The authors wish you all the best in your study and your other professional activities.

For people with an intellectual disability there are all these stumbling blocks. Just when you walk into the station the first (place) you come to is the counter and you have to explain to the police officer there what the problem is. The first decision to do something about being a victim might be the only one you have. After that your courage fails you. You start to blame yourself and feel degraded. (Cleartalk: 45)

SECTION 4

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Demonstrate knowledge of consequences *(by predicting possible options/outcomes)*

When people talk with each other it is usually with some kind of intent in mind. Control over communication often lies with the person who is mindful of the (possible) outcome of any communication episode. If a person does not understand that there are consequences which flow directly from responding to others they are likely to remain passive and a victim of the conversation ....and its outcomes.

What do you think will happen to (you) now/when you leave the station/.....? What should we do about....?

Procuring assistance *(by supplying name and contact information)*

It is often appropriate to call on the services of a third party to help create a meaningful interaction between a police officer and a member of the public. Although it may be obvious to the police who this person should be, the person being interviewed may have their own need and preference.

Do you want me to call/phone/find a friend/helper/carer to help you while you talk to me/I ask you questions?

This pamphlet is one part of the "Cleartalk" package.

Other components are:

The "Cleartalk" report which is based on the perceptions and responses of police to intellectual disability and communication.

The "Cleartalk" training materials which have been designed as a direct response to the needs and perceptions of police officers.

The "Cleartalk" publicity materials. These consist of multiple copies of this brochure and the "Cleartalk" poster.

All the above are available from:

Dr. Mark Brennan
Charles Sturt University
PO Box 588, Wagga Wagga, NSW 2678

Telephone (069) 33 2441
Facsimile (069) 33 2888

For support in communicating with people with an intellectual disability contact your local advocacy group, service provider or police liaison officer.

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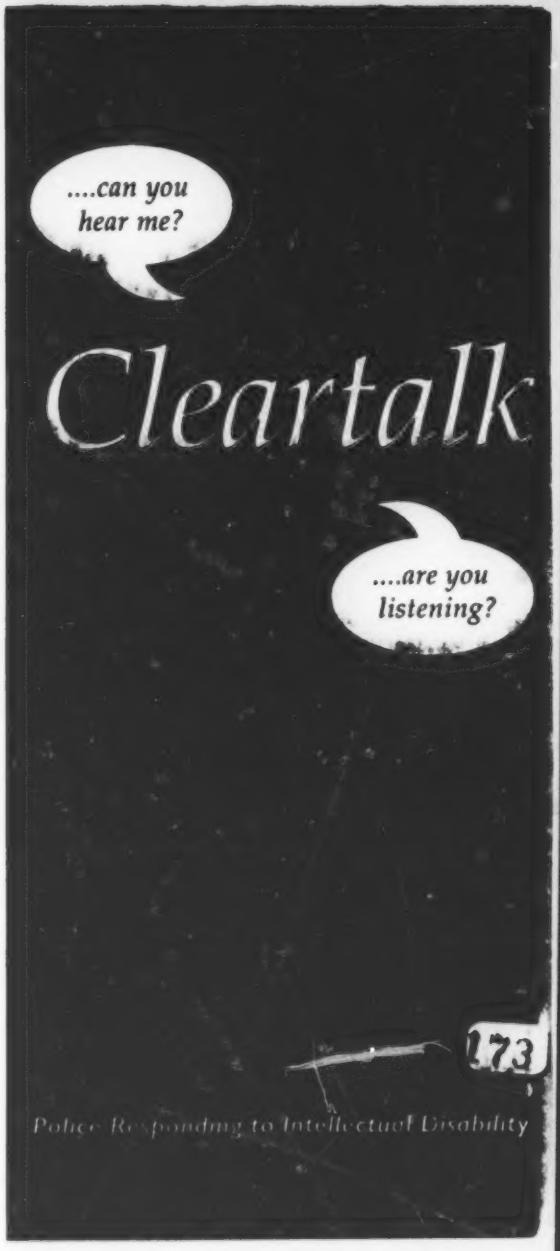


BEST COPY AVAILABLE

...one in four people appearing before local courts (may) have intellectual deficits (including difficulties in verbal skills, memory, reasoning and understanding) which makes it extremely difficult for them to participate adequately in the process of justice

(Hayes, 1993: 53)

A high proportion of people who appear before courts and who end up in gaol do not comprehend what is happening to them. They do not have the capacity to cope. They do not know how to protect themselves. These people are not easily identified and do not necessarily exhibit obvious characteristics. More likely than not they simply go along with what is happening to them.

The "Cleartalk" study, which examined the responses of NSW Police ervice officers to intellectual disability, recommended the use of a questioning procedure which would assess the effectiveness of communication between police and the public. For this purpose the A.C.E. procedure (Assessment of Communicative Effectiveness) has been developed.

- It is consistent with the Commissioner's Guidelines on fair interview practices.
- It is manageable and it has been requested by police officers who want to communicate effectively with people with intellectual disabilities and with the public generally.
- It helps to identify people who, for one reason or another, may not understand what is happening to them. This is especially true of people with an intellectual disability.
- It can be used as a standard procedure alongside other interviewing requirements.

(A.C.E.)

ASSESSMENT OF COMMUNICATIVE EFFECTIVENESS

Awareness of self in time and space
(by supplying information about self and environment)

If a person is not aware of where they are and why they are there, then statements and responses from a person in such a state have to be interpreted accordingly. This does not mean 'disregard the person' or 'dismiss what they say'.

Can you tell me your name? Where do you live? Where are we now?

Acknowledge identity of actors
(by saying what is happening)

In order for a communicative situation to proceed effectively everyone needs to acknowledge the identity of each other (even if it is to identify each other as strangers). People identify each other most readily by their appearance or what they do, using a label. Although this seems to identify each other clearly there may in fact be no conceptual understanding.

Do you know why you are here? What are we doing?

Confirm hearing ***(by repetition)***

A conversation can proceed on the social form of its development. Head nodding, affirming gestures, and answers of 'yes' and 'no' all help construct the social features of a conversation. It is possible however that such behaviour is simply a set of actions, and reactions, which are not in fact responses to what is being said.

Can you please tell me what I just said?

Demonstrate comprehending ***(by retelling)***

People can talk and fuel the form of conversation by asking undetailed questions and getting others to respond. The other person may however not understand what is being talked about. Communication can only be clear when both parties have access to a common understanding of what is happening to each of them. To ignore this feature of communication makes it possible for meaningless surface features to stand for communication.

In your own words tell me what we have just been talking about.

Demonstrate control ***(by requesting clarification)***

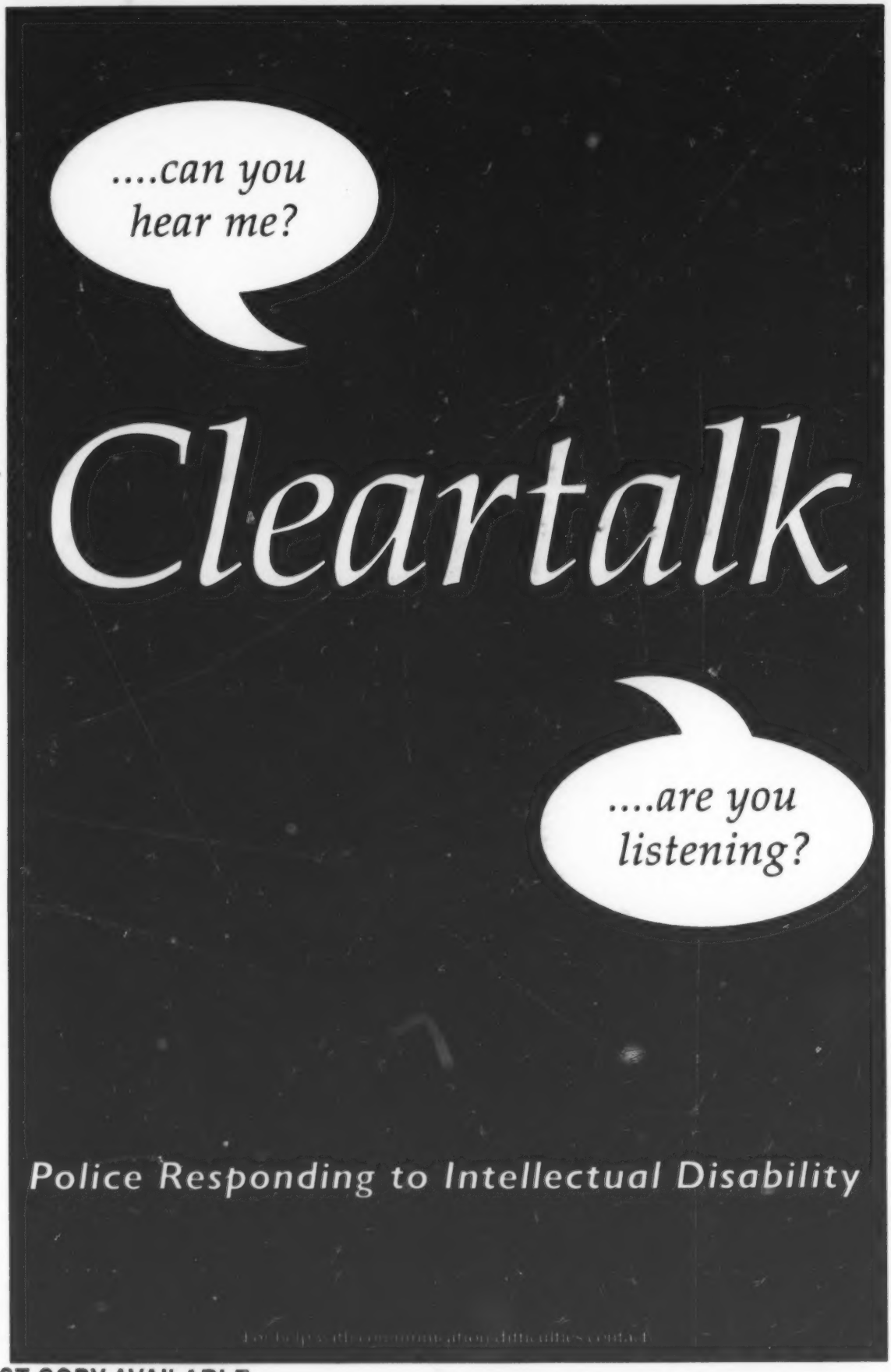
Participants in a language episode control the conversation to a greater or lesser degree. This is done by allowing, inviting or restricting each other's access to features such as topic change, choice, turn taking, role change, wait time, and interruption.

Ask me something you want to know more about

Demonstrate global understanding
(by reconstructing interviewing episode)

Effective communication operates when people know what is going on. This suggests a general understanding of the situation. To see people lined up in the street only makes sense when we know they are waiting for a bus. Similarly conversations do not make sense unless we have some kind of notion of the purpose behind it.

I've been asking (a few/lots of) questions. Tell me why (why do you think) I have been asking you these questions?



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